

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For The Period
From April 1, 1953
Through June 30, 1953

VOLUME 71

SI GARRETT, Attorney General

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QUARTERLY REPORT
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**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1953, through June 30, 1953, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

SI GARRETT,
Attorney General.

OPINIONS

house. Please advise if the ordinary and necessary expenses of the Governing Body in making such trips may be paid by the county. Also may the county pay the members of the County Governing Body additional compensation for such duties, which do not seem to be within the contemplation of the Local Act No. 735, 1951 Acts 1288, fixing the compensation of the members of the governing body.

“Also it may be necessary that the Governing Body meet more than four times a month for several months on account of the necessity of getting a new courthouse constructed as soon as possible.

“Will the business transacted at such additional meeting be legal? May the members be compensated for their services in attending such additional meetings of the Governing Body, and if so, what amount per diem?”

Your inquiry asks four questions:

1. May the members of the county governing body receive expenses in travelling to inspect other courthouses for the purpose of discovering a suitable type of courthouse for Franklin County?

2. May the members of the county governing body of Franklin County receive compensation in addition to the ten dollars per diem, not to exceed forty dollars per month, as provided for in Section 4 of Act No. 735, General and Local Acts 1951, page 1288?

3. May the county governing body of Franklin County legally meet more than four times per month?

4. May compensation be received by the members of the county governing body for attending meetings in excess of four per month?

1. In answer to your first inquiry, you are advised that under the provisions of Title 12, Sections 185 and 186, Code of Alabama 1940, the county governing body has full authority to erect a courthouse. **Board of Revenue of Etowah County v. Hutchins**, 250 Ala. 173, 33 So. 2d. 737. Incident to the full authority of the county governing body of Franklin County to erect a courthouse, it appears reasonable to me that the members of the county governing body should desire to inspect other courthouses in order to determine what type of courthouse would be suitable for Franklin County.

Section 4 of Act No. 735, *supra*, provides as follows:

“Section 4. Except as herein otherwise provided, the members of the Board of Revenue of Franklin County shall receive as their entire compensation for the services performed as such members ten dollars per day for each day's attendance upon a meeting of the board, but not in excess of forty dollars per member per month payable out of the general fund of Franklin County, Alabama.”

It is to be noted that the entire compensation for services performed as members of the Board of Revenue is ten dollars per day for each day's attendance upon meetings of the board, but this amount cannot exceed forty dollars per month for each member. In my opinion, this per diem in the amount of ten dollars per day is compensation to the member of the county governing body for personal services, whereas travelling expenses are not compensation for personal services. This office formerly held that the members of the Court of County Revenues of Franklin County, although operating under a local act which did not provide for mileage or per diem in connection with duties in respect to the public roads, nevertheless were entitled to such mileage and per diem by virtue of Section 6771, Code of Alabama 1923, as amended by Act No. 662, General Acts 1939, page 1049. Quarterly Report of Attorney General, Vol. 25, page 62. In my opinion, Section 4 of Act No. 735, supra, in fixing the "entire compensation" of the members of the county governing body of Franklin County, does not preclude those members from receiving mileage and per diem under the provisions of Section 6771, as amended, supra. Certainly, when a member of the county governing body is travelling to inspect other courthouses for the purpose of discovering a suitable model for the Franklin County courthouse, he is performing a duty in connection with the building of a county building and should be paid in accordance with the mileage and per diem prescribed by Section 6771, as amended, supra. The rate prescribed by this section is five cents per mile and four dollars per day.

You are advised, however, that such duties should be directed by the county governing body previous to the inspection trip. Section 6771, as amended, supra.

2. In answer to your second inquiry, you are advised that compensation, as distinguished from travelling expenses, cannot exceed ten dollars per day for each day's attendance upon the meetings of the county governing body and cannot exceed forty dollars per month per member. Section 4 of Act No. 735, supra. It is evident that the Legislature intended to limit the compensation of the members of the county governing body by the use of the term "entire compensation." This amount was limited to the amount of ten dollars per day and it is expressly provided that such per diem cannot exceed forty dollars per month. I find no provision of law for the payment of additional compensation to the members of the county governing body regardless of additional duties which the members of the county governing body think necessary to perform, except that provided for in Section 6771, as amended, supra.

3. Act No. 735, supra, does not prescribe the number of meetings per month to be held by the county governing body of Franklin County. Section 5 of Act No. 735, supra, does provide, however, that: "Except as otherwise provided herein, the Board of Revenue of Franklin County shall have the same powers and jurisdiction, and shall perform the same duties which are now or may hereafter be conferred or imposed upon boards of revenue, courts of county commissioners or other like county governing bodies by the general laws of the State of Alabama."

It is appropriate, therefore, to consult the general law as to the number of meetings that can be held. Title 12, Section 9, Code of Alabama 1940, provides that the regular terms of the county governing body are to be held on the second Monday in each month. Title 12, Section 10, Code of Alabama 1940, provides as follows:

“§ 10. Special terms; notice of.—In cases where officers are to be appointed, or vacancies supplied, or any other special duty required by law to be performed, a special term must be held, by direction of the judge of probate, upon ten days' notice by advertisement in some newspaper in the county, or by posting up at the courthouse door, and two other public places in the county, notice of the same.”

You will note, therefore, that the county governing body of Franklin County, may hold special terms in accordance with Section 10, *supra*. Such meetings, when called in compliance with said Section 10, will be legal meetings regardless of the number held during one month.

4. In answer to your fourth question, you are advised that if more than four meetings are held per month, the members are prohibited from receiving more than the forty dollars per month provided for in Section 4 of Act No. 735, *supra*.

Yours very truly,

SI GARRETT

Attorney General

April 23, 1953

Hon. H. B. Hamner, Superintendent

Russell County Board of Education

Phenix City, Alabama

Schools — County Boards of Education — Teachers.

Where two county schools are consolidated, and the two principals of those schools have acquired tenure as principals, the principalship of the consolidated school must be awarded to one of these two principals, but the selection rests in the discretion of the county board, which, under the tenure law, is not required to make its selection strictly upon the basis of seniority.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of April 2, 1953, is as follows:

"Our County Board of Education will be grateful to you for your opinion with reference to the following situation:

"Seale High School and Pittsview High School have been consolidated into a new high school, with a new name, to be located in the present building of the former Seale High School. Since the former principal of Pittsview High School has had his job as principal consolidated out from under him, has the former principal of the Seale High School, in like manner, also had his job as principal consolidated out from under him?

"The consolidation has been made with the distinct understanding that the two former schools are now a new high school, with a new name. But the fact remains that the new high school is located in the building of the former Seale High School. Pittsview is being brought to Seale. Seale is not being moved. Is the present status of the two former principals identical, or is the principalship of the former Seale School still legally in existence?"

In my opinion, the present status of the two former principals is identical, provided each has acquired a continuing service status as principal. In my further opinion, the county board must in its discretion select one of the two as principal of the consolidated school.

Title 52, Section 356, Code of Alabama 1940, provides as follows:

"Cancellation of an employment contract with a teacher on continuing service status may be made for incompetency, insubordination, neglect of duty, immorality, justifiable decrease in the number of teaching positions, or other good and just cause; but cancellation may not be made for political or personal reasons."

Section 356, supra, enumerates the only grounds on which a tenure teacher's contract may be cancelled by the employing board of education. *Faircloth v. Folmar*, 252 Ala. 223, 40 So. 2d 697. But it will be noted that a "justifiable decrease in the number of teaching positions" is one of the enumerated grounds. Where two schools are consolidated, each having been under the supervision of a principal, it follows that, insofar as the two principals are concerned, the number of "teaching positions" has decreased from two such positions to one such position.

Title 52, Section 352, Code of Alabama 1940, as amended by Act No. 806, General and Local Acts 1951, page 1408, in part provides that:

"An instructor who has attained continuing service status and who is promoted to principal or supervisor shall serve for three consecutive school years as a principal or supervisor. Such promotion shall in no wise jeopardize the continuing service status of the teacher as an instructor; and, should the promoted instructor not be retained as principal or supervisor, his salary would be reduced to the salary paid instructors in accordance with the prevailing schedule in the county or city school system."

Therefore, under Section 352, as amended, *supra* a principal or supervisor can attain tenure as such, provided he serves as principal or supervisor for three consecutive school years. See *Clark et al. v. Beverly*, 257 Ala. 484, 59 So. 2d 810.

The teacher tenure statutes of this state do not contain any provision for the retention of tenure teachers on the basis of seniority or other preferential status, in the event of a justifiable decrease in the number of teaching positions. Therefore, retention on the basis of seniority is not available as a right, and the county board may in its discretion determine the basis for the retention of the two principals here involved. See 78 C. J. S., Schools and School Districts, Section 202, at page 1085, and cases there cited in footnotes Nos. 50 and 51.

In considering which of the two former principals to select as the principal of the consolidated school, the county board may consider such factors as their relative marital status, economic status, age, right to retirement benefits, and similar factors. *State ex rel. Ging v. Board of Education of City of Duluth*, 213 Minn. 550, 7 N. W. 2d 544.

Yours very truly,

SI GARRETT

Attorney General

May 7, 1953

Hon. John E. Mandeville, Clerk
Circuit Court of Mobile County
Mobile, Alabama

Fines — Fine and Forfeiture Fund — Counties.

Fines collected for the offense commonly known as leaving the scene of an accident, when the arrest was made by the sheriff or his deputies, should be paid into the fine and forfeiture fund, or general fund of the county if the fine and forfeiture fund has been abolished.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of April 16, 1953, is as follows:

"Your official opinion is requested in reference to the following matter:

"John Doe is arrested by a Deputy Sheriff of Mobile County, Alabama, and charged with the offense of Leaving Scene of an Accident. At the trial in the Circuit Court the Defendant enters a plea of guilty and the Court assessed a fine of \$100.00 and costs. The Defendant paid the fine. Your attention is invited to General Acts 1945, page 494, and Title 36, Section 53 (1), Code of Alabama of 1940.

"Under the provisions of a resolution adopted by the Board of Revenue and Road Commissioners of Mobile County, Alabama, fines for violation of the rules of the road are earmarked for the pension fund. A copy of the resolution is attached hereto for your information.

"Question: In the instant case should I pay the fine to the General Fund for the credit to the pension fund?"

Act No. 298, General Acts 1945, page 494, provides in pertinent part as follows:

"Section 1. That all of the fines and forfeitures, which hereafter may be paid by any person or persons, convicted in any court of competent jurisdiction of violations of the rules and regulations promulgated by the State Highway Commission, concerning the operation of motor vehicles upon the highways of this State, and of violations of the Alabama Highway Code, where the person or persons thus convicted have been arrested by the Sheriff, or his deputies, or by any other county or municipal law enforcement officer authorized and qualified to make such arrests, shall be paid into the general fund of all counties that do not have a fine and forfeiture fund and into the fine and forfeiture fund of the counties that have a fine and forfeiture fund in which the offense was committed and shall be controlled and disbursed as other general funds and fine and forfeiture funds in the respective counties."

Under the provisions of Act. No. 298, supra, if the offense is a violation of the rules and regulations promulgated by the State Highway Commission, concerning the operation of motor vehicles upon the highways of this State, or a violation of the Alabama Highway Code, then the fines and forfeitures must be paid into the proper fund in the manner therein provided.

The matter here under consideration does not involve a rule or regulation of the Highway Commission; therefore, if the fine here involved is to be paid into the proper fund in accordance with the provisions of Act No. 298, supra, it is necessary that the offense be one in violation of the Alabama Highway Code.

The Alabama Highway Code, as such term is used in Act No. 298, supra, appears to embody all those laws relative to the use of the public highways within this State. The provisions of Act No. 347, General Acts 1947, page 348, are designated as "The Alabama Highway Code." Section 76 of said Act places the duty on a driver of a vehicle involved in an accident resulting in death or injury to any person, or in property damage, to stop immediately at the scene of such accident.

The Alabama Highway Code appeared as Sections 1397(1)-1397(180), Michie Alabama Code of 1928, but in the 1940 Code of Alabama certain sections were placed in Title 23, while other sections were placed in Title 36. Title 36, Section 31, Code of Alabama 1940, contained the provisions of Section 76, *supra*, as amended.

Section 31, *supra*, was repealed by implication by Act No. 558, General Acts 1943, page 548. Quarterly Report of Attorney General, Vol. 35, page 37. Section 2 of Act No. 558, *supra*, has since been repealed by Sections 1, 2 and 3 of Act No. 427, General Acts 1945, page 670. Sections 7 (a) and 7 (b) of Act No. 558, *supra*, are now repealed by the provisions of Act No. 126, General and Local Acts 1951, page 354.

It is, therefore, my conclusion that those remaining provisions of Act No. 558, *supra*, the provisions of Act No. 427, *supra*, prescribing the duties of a motor vehicle driver involved in certain accidents on the highways of this State and prescribing the penalties for failure to perform these duties, are part of the Alabama Highway Code as such term is used in Act No. 298, *supra*.

Therefore, the offense commonly known as leaving the scene of an accident being a violation of the Alabama Highway Code, it is my opinion that the fine here under consideration must be paid into the General Fund of Mobile County, inasmuch as the fine and forfeiture fund of Mobile County was abolished by Act No. 9, General Acts 1890-91, page 9.

In remitting such fine to the general fund, it is the duty of the clerk to indicate that said remission was derived from a fine for the violation of the Alabama Highway Code (or Rules of the Road). When this duty has been performed by the clerk, said funds are then in the custody and control of the county governing body, and the county governing body may dispose of such funds according to law. It is further my opinion that it is not the duty of the clerk to indicate that the funds herein discussed should be paid into the pension fund or any other fund except the general fund. It is the duty of the clerk, however, in remitting to the general fund, to show that the remission was derived as aforesaid.

Yours very truly,

SI GARRETT

Attorney General

May 7, 1953

Hon. Arthur Burns, Solicitor

Sixteenth Judicial Circuit

Etowah County

Gadsden Alabama

Justice of the Peace — Indictments — Circuit Courts.

1. The provisions of Title 13, Section 424, Code of Alabama 1940, are applicable to a defendant in a justice of the peace court charged with driving while intoxicated.

2. When a defendant in a justice of the peace court, charged with driving while intoxicated, demands a jury trial under the provisions of Title 13, Section 424, Code of Alabama 1940, an indictment is necessary for the trial of the defendant in the circuit court.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of April 13, 1953, is as follows:

"I would appreciate it very much if you would give me your opinion as to whether a case involving a charge of Driving while Intoxicated:

"(1) Can be removed to the Circuit Court from a Justice Court under Title 13, Section 424, Code of Alabama 1940, and

"(2) If the answer to Number 1 is in the affirmative, whether or not a Grand Jury indictment is necessary in such case or if the affidavit and warrant or complaint is sufficient.

"My own feelings are that Title 29, Section 121, Code of Alabama 1940, governs the offense of Driving while Intoxicated based upon the following reasoning:

"(1) That the law against Driving while Intoxicated is patently a law for the suppression of the evils of intemperance.

"(2) That since Title 29, Section 121, Code of Alabama 1940, specifically does not include any felony (Transport, Distilling, Possession of Still) and that since a Justice of the Peace does not have jurisdiction over the offense we generally designate as Violating the Prohibition Law, the Legislature apparently meant to include such offenses as Driving while Intoxicated in said Title 29, Section 121.

"Please advise me at your earliest convenience concerning this matter so that I may know whether to advise Justices of the Peace to proceed to trial in such cases regardless of jury demand, and whether an indictment is necessary if the case is certified to the Circuit Court by said Justice Court."

Your first question must be answered in the affirmative.

Under the provisions of Title 13, Section 417, Code of Alabama 1940, a justice of the peace has jurisdiction of the offense of operating a motor vehicle while intoxicated, *Carter v. State*, 34 Ala. App. 181, 39 So. 2d 297; cert. den. 252 Ala. 26, 39 So. 2d 298. Under the provisions of Title 13, Section 424, Code of Alabama 1940, when a demand for a jury trial is made by a defendant in a justice of the peace court having jurisdiction, the jurisdiction of said court is ousted and the defendant, meeting certain conditions as enumerated in said section, must be made to appear at the next session of the circuit court having jurisdiction.

In answer to your second inquiry, you are advised that a grand jury indictment is necessary.

In absence of a statute to the contrary, Section 424, *supra*, does not authorize the circuit court to proceed to try the case without the formality of an indictment, since to do so would violate the "due process" clause of the Federal Constitution. Biennial Report of Attorney General, 1936-38, page 370; *Streanger v. State*, 21 Ala. App. 600, 110 So. 595; *Elmore v. State*, 24 Ala. App. 368, 137 So. 462.

Under the provisions of Title 29, Section 121, Code of Alabama 1940, all prosecutions for a violation of the prohibition laws and of any law for the suppression of the evils of intemperance, which violation constitutes a misdemeanor, may be begun in any court by affidavit as well as indictment.

I am of the conclusion, however, that the offense of driving while intoxicated is not a violation of a law for the suppression of the evils of intemperance, but rather a violation of a law pertaining to the "Rules of the Road."

This opinion is based on the fact that the laws for the suppression of the evils of intemperance appear to be primarily aimed at the protection of the individual toward whom the effects of alcoholic beverages are injurious, whereas the offense of driving while intoxicated is for the protection of persons other than the person intoxicated. It is to be further noted in the matter that to be a passenger in a motor vehicle while intoxicated is not an offense in this State, in absence of additional circumstances, but that the offense is directed at the operator of such vehicle

The punishment for the offense of driving while intoxicated is, by the provisions of Title 36, Section 2, Code of Alabama 1940, as amended by Act No. 379, General Acts 1947, Page 271, made a misdemeanor, and there is no provision in the laws of this State, regarding offenses contained in the

Rules of the Road, to provide for the commencement of such offenses in a circuit court other than by indictment.

This conclusion is further substantiated by the fact that the offense of driving while intoxicated, at least since 1927, when it was included in Act No. 347, General Acts 1927, page 348, the provisions of which act were designated as the "Alabama Highway Code," has been continually included in those laws pertaining to the rules of the road and is at present so included in Title 36, Section 2, Code of Alabama 1940, as amended, *supra*.

It is, therefore, my opinion that an indictment is necessary for the trial of the offense of driving while intoxicated in a circuit court when a defendant makes a demand for a jury trial under the provisions of Section 424, *supra*.

Yours very truly,
SI GARRETT
Attorney General

May 7, 1953

Hon. W. G. Pruett

State Highway Director

State Highway Department

C A P I T O L

Highways and Highway Department — Counties — Municipalities — Roads and Bridges.

1. The Chief of the Bureau of County Aid, under the general supervision of the Highway Director, may approve a route for the construction of a road under the provisions of the Farm to Market Road Act of 1943, as amended, even though said route is within a municipality and is a city street.

2. The Chief of the Bureau of County Aid, subject to the general supervision of the Highway Director, has a wide discretion in approving or disapproving routes for farm to market roads within and without a municipal corporation.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of April 15, 1953, is as follows:

"I have a request from the officials of Bibb County for the improve-

ment of certain streets in the town of West Blocton, under the provisions of the 'Farm to Market Road Act of 1943.' It is typical of a number of such requests, and it is my wish to comply, if the above referenced 'Act' will permit.

"In the light of the above, your opinion is requested on a section of the second paragraph of the Act, (Title 23, Article 7, Section 78 (2)), which I quote: 'Definitions—The words "county roads" as herein used shall mean all public roads (including bridges) within a county and continuing into or through the corporate limits of any city or town in such county which are not a part of the state highway system and which are sometimes called "farm to market roads." '

"To illustrate this particular case, I am enclosing a sketch which was submitted by the County with their request for the improvement (using state aid funds) of certain streets indicated by red pencil. The street (not colored) running east and west with the notation 'Bit. pavement in place,' and connecting with the Centerville-Birmingham highway 'Alabama 5,' is part of an established 'farm to market' route, continuing 'into' and 'through' the corporate limits of West Blocton.

"Would it be within the limitations of the Farm to Market Road Act, to include the improvement of the streets shown in red, in our state aid program?"

The diagram referred to in your inquiry represents a street or highway running East and West and intersecting the Centerville-Birmingham State Highway No. 5, from the East at West Blocton. The streets or ways proposed to be surfaced under the provisions of the Farm to Market Road Act (Act No. 329, General Acts 1943, page 311) are adjacent to the above described farm to market road. Some of these streets and ways intersect said road and some run parallel with it.

I am of the opinion that it is within the discretion of the Chief of the Bureau of County Aid, subject to the general supervision of the State Highway Director, to pave such streets or ways pursuant to the provisions of the Farm to Market Road Act of 1943, *supra*, as amended by Act No. 41, General Acts 1945, page 47; Act No. 440, General Acts 1947, page 319; Act No. 14, General and Local Acts 1950, Fourth Special Session, page 55; and Act No. 855, General and Local Acts 1951, page 1484.

Of course, the Farm to Market Road Act of 1943, as amended, *supra*, provides a method whereby roads not on the State Highway system may be constructed with State and county funds. The type of road which may be constructed under the provisions of said Act is defined as a county road and more specifically described as follows:

"The words 'county roads' as herein used shall mean all public roads

(including bridges) within a county and continuing into or through the corporate limits of any city or town in such county which are not a part of the State Highway System and which are sometime called 'farm to market roads.' . . . "

See Section 2 of Act No. 41, supra.

Clearly, therefore, a road may be constructed within a municipality under the provisions of the Farm to Market Road Act of 1943, supra.

In the first instance, the selection of those county roads, including ways within a municipal corporation, to be constructed pursuant to the Farm to Market Road Act, supra, is made by the county governing body. Section 4, Act No. 329 supra. Such governing body then makes application to the Bureau of County Aid. The route is either approved or disapproved by the Chief of the Bureau of County Aid, subject to the general supervision of the State Highway Director. Section 4, supra, and Section 3, Act No. 41, supra. If the route selected by the county governing body and approved by the Chief of the Bureau of County Aid and the Highway Director is constructed under the Farm to Market Road Act, supra, a municipality may, of course, contribute along with county to the cost of construction. See, Title 23, Sections 49 and 53, Code of Alabama 1940.

The State Highway Department, acting through its Director and Chief of the Bureau of County Aid, has a wide discretion in approving or disapproving farm to market road routes proposed by county governing bodies. Surely, the Highway Department in approving or disapproving such routes is not limited to one route continuing into or through the corporate limits of a city or town. There may be several such routes. Of course, the Farm to Market Road Act, supra, is not intended to afford authority for the mere paving of streets within a municipal corporation. The act is for the purpose of authorizing the construction of roads leading from rural areas to other roads or towns even though such routes pass through corporate boundaries or upon city streets. If, however, the route proposed to be constructed under the provisions of the Farm to Market Road Act, supra, serves any purpose in connection with such a route, for example, supplementing an existing route, or relieving traffic on an existing route, said road may be constructed under the provisions of the Farm to Market Road Act, supra.

Answering your specific question, therefore, I am of the opinion that it is within the discretion of the Highway Director and the Chief of the Bureau of County Aid to approve the routes designated in the attached diagram.

Very truly yours,

SI GARRETT

Attorney General

May 7, 1953

Hon. H. M. Brittain

Town Attorney

Town of Wedowee

Randolph, County

Wedowee, Alabama

Municipalities — Licenses — Motor Carriers.

A motor carrier is not subject to a municipal license tax when it enters the town merely to deliver goods, and does not maintain terminal or station facilities for transportation of persons or property, and does not receive any freight or express for transportation to points outside the municipalities.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of March 9, 1953, is as follows:

"The Town of Wedowee has an ordinance reading as follows: Each person, firm or corporation or motor transportation Company who unloads, delivers, distributes or disposes of any goods, wares or merchandise or produce which was transported from a point without the Town of Wedowee, Alabama to a point within the Town of Wedowee, Alabama -----\$10.00.

"North Alabama Express Company, Inc. delivers express and freight from without the Town of Wedowee to people within the Town of Wedowee but do not pick up freight or express in the Town of Wedowee for delivery to other points without Wedowee. These people do not operate a bus terminal in Wedowee and as far as I know it is correct that they do not carry any freight out of Wedowee to other points. It is the contention of these people that they cannot be licensed for delivery within the Town of Wedowee since they do not have a terminal or station here and they carry no freight out of Wedowee to other points. Their contention as they state is that they are exempt under Section 31, Regulations of Alabama Motor Carrier Act, entitled **Municipalities**.

"Thanking you for an opinion as to whether or not the license outlined above is collectible."

This licensing ordinance taxes motor carriers unloading, delivering, distributing, or disposing of goods, transported outside Wedowee to a point within. The carrier involved delivers express and freight from points out-

side the town to points inside, but picks up no goods within Wedowee for transportation to points outside, and maintaining no terminal or station facilities inside the town.

The licensing ordinance is not applicable to the carrier involved. Your situation is squarely within Act No. 669, General Acts 1939, page 1089 (Title 48, Section 301 (31), 1951 Cumulative Pocket Part, Code of Alabama 1940).

The applicable portion of Section 31 of this Act is as follows:

"Any incorporated city or town in this State shall have the right by proper ordinance to tax and collect reasonable privilege license or taxes from any motor bus terminal, or any person operating any terminal or station facilities for transportation of passengers, property or express, transported by motor carriers and any motor carrier as defined by this Act where such motor carrier does business in said city or town by receiving passengers or freight for transportation for hire between said city or town and another point in Alabama, . . ."

In *Decatur Transit v. City of Gadsden*, 249 Ala. 314, So. 2d. 339, an identical Gadsden license was held inapplicable to a company which merely delivered gasoline inside Gadsden, and maintained no business terminal or station facilities in Gadsden, and transported no goods from inside Gadsden to points outside. The court reasoned that Section 31, *supra*, omitted and reference indicating city authority to tax motor carriers for the mere delivery of goods within the city and nothing more. The court concluded that the Legislature had intended to withhold such authority to levy a license tax upon common or contract carriers who did nothing more than come into a city and deliver their goods.

The case of *City of Hartselle v. Baggett Transportation Company*, 35 Ala. App. 640, 51 So. 2d. 713, is to the same effect.

Therefore, the Wedowee licensing ordinance is inapplicable to North Alabama Express Company under the facts stated in your request.

Very truly yours,

SI GARRETT

Attorney General

June 9, 1953

Hon. W. G. Pruett, Director

State Highway Department

Montgomery 4, Alabama

Counties — Jackson County — Roads and Bridges — Highways
Highway Department.

1. Under Act No. 140, General and Local Acts 1951, page 371, applying to Jackson County only,, it is mandatory for the county governing body to turn over to the State Highway Department the proceeds of the 1½ mill tax levy made by it under authority of Section 215, Constitution of 1901, for the payment of principal and interest on bonds, which were issued to refund bonds issued for public road and bridge purposes only.

2. Under said Act No. 140, supra, it is mandatory for the county governing body to turn over to the State Highway Department that part of the proceeds of the 1 mill tax levy made by it under authority of Section 215, supra, designated by the county governing body to be used for roads and bridges, but it is not mandatory to do so until this designation has first been made by the county governing body.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of May 12, 1953, is as follows:

“Under date of July 1, 1951, the State Highway Department of Alabama took over the maintenance and construction of roads in Jackson County under Senate Bill 336 by Benson.

“Under this Act, the Highway Department is responsible for the construction, maintenance and repair of County roads and bridges which includes liquidation of County Road and Bridge Debt Service in Jackson County.

“By virtue of the Act, the Highway Department received all the funds used for the purpose of construction, maintenance and repairing of roads and bridges and Road and Bridge Debt Service, and was to receive all accruals of such moneys subsequent to July 1, 1951.

“To date, this Department has received the accruals of all moneys it is entitled to receive with the exception of accruals on the County Road and Bridge Bond Retirement Fund 1½ mills and Road and Bridge 1 mill fund.

“The 1½ mill Road and Bridge Bond Retirement Fund is devoted to the purpose of retiring principal and interest of the Refunding Bonds of the County of Jackson as set out in the tax levy made by the Board at its meeting January 22, 1951, and in accordance with the Bond indenture, quote: ‘For the prompt payment of this bond, both principal and interest, as the same becomes due, and for the levying of taxes sufficient therefor, the full faith, credit and resources of said County are hereby irrevocably pledged.’

"The 1 mill Road and Bridge Fund Tax Levy devotes this tax to construction and maintenance of public roads, bridges and buildings.

"We would like to have your opinion whether or not it is mandatory upon the governing body of Jackson County to turn over to the State Highway Department for the purpose of payment of interest and principal of the refunding bonds all accruals from the 1½ mill tax levy since the State Highway Department has assumed the responsibility of this outstanding liability payable out of County funds held in trust while operating under Senate Bill 336.

"We would, also, like to have your opinion whether or not it is mandatory for the Governing body of Jackson County to turn over all the accruals of the 1 mill Road and Bridge Fund since July 1, 1951 not allocated to the purpose of buildings to be used for Road and Bridge construction and maintenance while the Highway Department is operating under Senate Bill 336."

In answer to your request, it is assumed that the 1½ mill "road bond retirement fund" consists of the proceeds of a tax levy made by Jackson County within its constitutional debt limit under authority of Section 215, Constitution of Alabama 1901, for the payment of principal and interest on bonds which were issued to refund bonds issued for erecting, maintaining, and repairing public roads and bridges only.

So viewing your request, it is my opinion that your first question should be answered in the affirmative.

Act No. 140, General and Local Acts 1951, page 371, provides that the State Highway Department, subject to certain provisions and limitations contained in the act, is responsible for the construction, maintenance, and repair of the county roads and bridges in Jackson County.

Section 4 of the act provides as follows:

"Upon the effective date of this Act the governing body of Jackson County and all officials of the county shall transfer and turn over to the State Highway Department all funds, supplies, equipment, machinery and materials held, owned, leased or controlled by it or them for the construction, maintenance and repair of county roads and bridges. Thereafter on or before the tenth day of each month, the county treasurer, the county governing body and all other county officials of Jackson County shall pay over to the State Highway Department all funds collected or received as taxes, including the motor vehicle license tax allocated to the county, or otherwise by them from any source, whatsoever during the preceding month which are designated or to be used for the purpose of constructing, maintaining or repairing county roads or bridges. Such funds shall be maintained separately by the State Highway Department and shall be used by it solely for the purpose of construction, maintenance and repair of county roads and bridges in Jackson County subject to the provisions of this Act."

By Section 6 of said act the following was provided:

"After the effective date of this Act, the State Highway Department shall pay all of the outstanding financial obligations of Jackson County which were incurred prior to the adoption of this Act, for the construction, maintenance or repair of county roads and bridges out of the funds to be paid over to the Highway Department under the provisions of Section 4 of this Act. Nothing contained in this Act, however, shall be construed to relieve Jackson County of the liability for paying any of its financial obligations now existing or hereafter incurred under the provisions of Section 2 (b) hereof in the event the funds paid over to the State Highway Department are insufficient to do so, or to require any of the financial obligations presently existing or hereafter incurred under the provisions of Section 2 (b) hereof of the county to be paid from funds of the Highway Department."

It is to be here noted that Act No. 140, *supra*, is almost identical with Act No. 143, General and Local Acts 1951, page 378, applying to Franklin County. This latter act was before the Supreme Court for its consideration in the case of *Hall v. Underwood*, _____ Ala., _____ 63 So. 2d 683. Insofar as here pertinent the court there said:

"Section 4 of the Todd Act makes it the duty of 'the governing body of Franklin County and all officials of the county' to pay over to the State Highway Department 'all funds collected or received as taxes * * * designated or to be used for the purpose of constructing, maintaining, or repairing county roads or bridges.' Section 215 of the Constitution of 1901 provides, *inter alia*, as follows:

" * * * for the erection of necessary public buildings, bridges, or roads, (a) any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

"It is argued by complainants that Section 215 of the Constitution means that only the county and not the State has control of the funds raised by the county by taxation, and that the Highway Department is claiming the motor vehicle license tax and the 2½ mill *ad valorem* tax (a county tax), and to allow the State to control these funds would be violative of Sections 104 (15) and 105 of the Constitution.

"It is our conclusion that from a fair and reasonable construction of the Todd Act in its entirety, these two funds could be used for roads and bridges only if, and when, the county governing body has first designated money from these funds to be used for road and bridge purposes, and that, therefore, the Highway Department is not entitled to receive these two funds from the county, or any money from said

funds, until the county governing body has designated money from these funds to be used for road and bridge purposes. That construction was placed on the Todd Act by the trial court, and with which we are in accord. So viewed, we are to the conclusion that the Todd Act does not violate Section 104 (15)."

It is my opinion that the court's holding is applicable here. If the said 1½ mill tax levy was made under Section 215 of the Constitution, supra, for the payment of principal and interest on bonds, which were issued to refund bonds issued for public road and bridge purposes only and not for public buildings also, it is mandatory that the proceeds from the said tax levy be turned over by Jackson County to the State Highway Department so that the department may discharge its duties and obligations as imposed by Act No. 140, supra.

It is likewise assumed that the 1 mill road and bridge fund levy was made under authority of Section 215 of the Constitution, supra, and at a time when Jackson County had not exceeded its constitutional debt limit. This tax is devoted to the construction and maintenance of public roads, bridges and buildings. This fund could be used for roads and bridges only if, and when, the Jackson County governing body has first designated money from this fund to be used for road and bridge purposes. The Highway Department is not entitled to receive this fund from the county or any money from said fund until this designation has been made. If this designation has already been made, then it is mandatory for the county governing body to turn over the funds so designated for roads and bridges to the State Highway Department; but if it has not made the designation, it is not mandatory until it is made.

Yours very truly,

SI GARRETT

Attorney General

June 9, 1953

Hon. H. H. Weldon, Sr.

Judge of Probate, and

Chairman, Commissioners Court

Elmore County

Wetumpka, Alabama

Counties — Insurance — Employers and Employees — Gasoline
Tax Fund — Road and Bridge Fund — Roads and Bridges.

1. A county governing body may, in its discretion, under the provisions of Acts No. 208 and 376, General Acts 1947, pages 69 and 267, establish a group insurance plan for the employees of the county involved, and may pay all or any part of the premiums thereon.

2. Such premiums may be paid from the general fund of the county, and if the employees concerned are properly paid from the road and bridge fund, the gasoline tax fund, or the farm to market road fund, premiums may properly be paid out of these funds.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of April 15, 1953, is as follows:

"The Commissioners Court of Elmore County is considering buying group insurance for its employees. This will provide group life, health, accident, hospital and surgical insurance for the employees, under Legislative Act No. 376-S280-Boutwell, approved August 16, 1947.

"Some of the employees are paid from the General Fund, some from the Road and Bridge Fund, some from the Gasoline Tax Fund, and some from the Farm to Market Fund.

"Please advise us if we can legally pay for this insurance,—and also if it can be paid out of the funds listed above, out of which the salaries are paid."

The governing body of Elmore County may legally contract for, and obtain and maintain policies of group life, health, accident, and hospital insurance for the benefit of employees of the county, at the discretion of the governing body, and may pay all or a part of the premiums on such policies. Acts No. 208 and 376, General Acts 1947, pages 69 and 267; Quarterly Report of Attorney General, Vol. 55, page 105.

You have not outlined the employees involved. Certainly, the premiums on group insurance policies may be paid from the county's general fund. As to the funds involved, the propriety of paying premiums from these funds would depend on the propriety of compensating the employees from the fund. If you are now properly compensating these employees from the road and bridge fund, the gasoline tax fund, or the farm to market road fund, then you may properly pay premiums for such employees from these funds. In this connection, I call your attention to opinions of this office in Quarterly Report of Attorney General, Vol. 2, page 215; Vol. 52, page 169; Vol. 18, page 71. See also, the recent opinion of this office to Hon. O. E. Cole, Chairman of the County Commission of Russell County, dated February 5, 1953 (Ms.), a copy of which is enclosed.

I have not considered the effect of the constitutional amendment proposed by Act No. 755, General and Local Acts 1951, page 1305, submitted November 4, 1952, and proclaimed ratified November 19, 1952. This amendment restricts the expenditure of money derived from certain taxes relating to motor vehicles and fuels. The amendment and the disposition of revenues thereunder have been the subject of an exhaustive recent opinion of this office to Hon. T. C. Almon, Judge of Probate, Morgan County, dated December 8, 1952 (Ms.).

Yours very truly,

SI GARRETT

Attorney General

June 9, 1953

Hon. Charles S. Doster, Jr.

Member, Alabama Hall of Fame Board

State Capitol

Montgomery, Alabama

Citizenship—Words and Phrases.

1. "Alabama" as used in House Joint Resolution 110, Act No. 646, General and Local Acts 1951, page 1110, means the geographical area and boundaries as described in the Act of Congress of March 3, 1817, establishing the Alabama Territory and also as described in Title 55, Section 16, Code of Alabama 1940.

2. "Citizen" as used in said Resolution 110, supra, means a person born in or naturalized by the laws of the United States, who has been a resident of the Alabama Territory, or who has been or is now a resident of the State of Alabama. It also includes one when he later becomes a resident of said state. The word resident is used to denote the place where one's habitation is fixed without any present intention of removing therefrom.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of May 11, 1953, is as follows:

"Please advise the meaning of the word, Alabama, as used in Act No. 646, House Journal Resolution 110 of the Legislature of Alabama, Regular Session 1951, approved September 4, 1951.

"Please advise the meaning of the word citizens, as it appears in the same resolution."

House Joint Resolution 110, Act No. 646, General and Local Acts 1951, page 1110, is as follows:

"Be It Resolved by the Legislature of Alabama, Both Houses Thereof Concurring:

"1. That there is hereby created an Alabama 'Hall of Fame' Board, to be composed of nine members named and appointed by the Governor on or before December 1, 1951, one from each Congressional District, to hold office during good behavior. Vacancies occurring on the Board shall be filled by the remaining members of the Board.

"2. The Board shall consider for election to the Alabama Hall of Fame worthy citizens of Alabama who have rendered outstanding services or who have won fame on account of their achievements, and it shall elect to the Hall of Fame such persons who are nominated for election and who receive a minimum of 8 votes of the total membership of the Board.

"3. The Board shall have authority to receive contributions, donations, and gifts; and the Director of the Department of Archives and History shall cause to be set apart in the Archives and History Building a section thereof to be used by the Board for display of busts, statues, or other exhibits relating to persons who have been elected to the Alabama's 'Hall of Fame.' "

The Congress of the United States, on March 3, 1817, established a territory to be called "Alabama," with the following boundaries, to wit:

"... beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido river, thence east to the western boundary line of the state of Georgia, thence along said line to the southern boundary line to the state of Tennessee, thence west along said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of Washington county, thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido river, and thence up the same to the beginning, . . . " Vol. 3, United States Statutes at Large, page 371.

On March 2, 1819, the Congress passed an act enabling the people of the Alabama Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states. Vol. 3, United States Statutes at Large, page 489.

On August 2, 1819, the people of the Alabama Territory, in a convention called for that purpose, formed for themselves a constitution and state government; and on December 14, 1819, the Congress passed a resolution declaring the admission of the State of Alabama into the Union. Vol. 3, United States Statutes at Large, page 608.

There may be, and possibly are, those in the past who played a prominent part in the formation of our state government and in writing a constitution therefor, or otherwise, who would be eligible for consideration to the "Hall of Fame" if Alabama meant, in addition to the State of Alabama, the Territory of Alabama.

Since the resolution establishing a "Hall of Fame" uses the phrase "citizen of Alabama" and not citizens "of the State of Alabama," I am of the opinion that the word "Alabama" means the geographical area and boundaries as described in the said act creating the Alabama Territory, and also as described in Title 55, Section 16, Code of Alabama 1940.

Amendment No. XIV to the Constitution of the United States provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside"

Congress conferred citizenship upon Indians by the Citizenship Act of 1924, 8 U. S. C. A., Section 601, and by the Nationality Act of 1940, 8 U. S. C. A., Section 501, et seq. An Indian, therefore, may be a citizen of Alabama if all other requisites to citizenship as hereinafter defined are met. *United States v. Hester*, 137 Fed. 2d 145; *Ex parte Green*, 123 Fed. 2d 862; *Pe. Heff*, 49 L. Ed. 848.

Neither race nor color is involved in the term "citizen". When used alone and without words of qualification, the term may have different meanings, depending upon the context in which it is found. It is taken in the sense which best harmonizes with the subject matter in reference to which it is used. While the word is not convertible with "resident," it is often used synonymously with such term without any implication of political privileges. *Prowd v. Gore*, 57 Cal. App. 458, 207 Pac. 490.

In *Gardina v. Board of Registrars*, 160 Ala. 155, 48 So. 788, our Supreme Court said:

"There are, then, under our republican form of government, two classes of citizens, one of the United States and one of the state. One class of citizenship may exist in a person, without the other, as in the case of a resident of the District of Columbia; but both classes usually exist in the same person. The federal Constitution, by this amendment (No. XIV), has undertaken to say who shall be citizens both of the states

and United States. Prior to this amendment, the states could probably have determined, respectively, who were citizens of each ”

It is my opinion that the term “citizen” is used in the said resolution to mean a person born in or naturalized by the laws of the United States, who has been a resident of the Alabama Territory or who has been or is now a resident of the State of Alabama. It also includes one when he later becomes a resident of said state. The word resident is used in a sense to mean the place where one’s habitation is fixed without any present intention of removing therefrom.

I do not believe the term “citizen” should be construed in a more restricted sense in view of the other provisions of the resolution which themselves restrict eligibility to worthy citizens who have rendered outstanding services or who have won fame on account of their achievements. Here, much is already left to the sound judgment and discretion of the Board.

Yours very truly,

SI GARRETT

Attorney General

June 9, 1953

Hon. James F. Hester

Judge of Probate

Franklin County

Russellville, Alabama

Highways and Highway Department — Roads and Bridges —
Road and Bridge Fund — Gasoline Fund — Franklin County.

Act. No. 143, General and Local Acts 1951, page 378, requires that actual payment for the acquisition by Franklin County, of rights of way, by purchase or by exercising its right of eminent domain, for the construction of roads in Franklin County, Alabama, be made by the State Highway Department from funds turned over to the department by the Franklin County governing body pursuant to that act.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of March 19, 1953, is as follows:

"Amendment voted on as Amendment No. 1 in the last November election, Act No. 755, 1951 Acts, Page 1305, provides that the funds defined therein, may be used, among other things, for costs of highway rights-of-ways. Franklin County has on deposit in the Public Highway and Traffic Fund, which deposits were made in accordance with the instructions from the Chief Examiner of Accounts, funds which have not as yet been remitted to the State Highway Department, for the reason that, the State Highway Department is constructing and maintaining all public roads of Franklin County under the authority of Local Act of the Legislature of 1951 No. 143, Page 378, and it is, from time-to-time calling on the county to procure rights-of-ways for use in its constructing and maintenance of public roads, the cost of which cannot be anticipated, and due to the fact that Franklin County lost its courthouse by fire January 12th last, it must finance another courthouse building from its ad valorem 2½ mill tax assessments which the Board of Revenue anticipates will load that source of revenue, and requires that the governing body conserve that source of revenue for the purpose of such construction of a new courthouse building.

"Please advise me whether or not the Board of Revenue of Franklin County may, at its discretion, hold a reasonable amount of said taxes derived from the sources defined in said constitutional amendment, for purchase of road right-of-ways or payment of condemnation damage assessments.

"Also, please advise how that part of the revenue derived from drivers license may be used for traffic control and what is meant by the term 'the cost of traffic regulation and the expense of enforcing state traffic and motor vehicle laws' relative to the duty of the county governing body, and oblige."

Your request relates to a proper interpretation of Act No. 143, General and Local Acts 1951, page 378. For reasons pointed out below, it will be impossible to answer your second question because of its hypothetical nature.

Before answering your first question, it is in order to discuss a recent interpretation of Act No. 143, supra, in *Hall v. Underwood*, (Ala.) 63 So. 2d. 683. This case held that gasoline tax fund money, which has always been held and treated as a road building and road repair fund, is to be transferred and turned over to the State Highway Department pursuant to Act No. 143. As to funds derived from the constitutional levy provided in Section 215, Constitution of Alabama 1901, these monies go to the State Highway Department under Act No. 143, supra, only if and when the county governing body first designates money from this fund to be used for road and bridge purposes. (The remarks in that opinion concerning the motor vehicle license tax (Title 51, Section 713, Code of Alabama 1940, as amended by Act No. 314, General and Local Acts 1951, page 609) have been rendered inapposite by virtue of the constitutional amendment proclaimed ratified

on November 19, 1952 (Act No. 755, General and Local Acts 1951, page 1305).)

Act No. 143, *supra*, contemplates that the actual purchase of rights of way and payment of compensation resulting from condemnation shall be made by the State Highway Department pursuant to Section 4 of that act. In short, the county, pursuant to Section 2 (d) of Act No. 143, *supra*, makes arrangements, so to speak, for the acquisition of rights of way by purchase or by exercising its right of eminent domain; but the actual payment, or "purchase," of the rights of way is made by the State Highway Department.

The Supreme Court in *Hall v. Underwood*, *supra*, made it clear that funds designated to be used for county road and bridge purposes should be turned over to the State Highway Department under Act No. 143, *supra*.

Your question concerning the disposition of revenues derived from drivers' licenses is too general for answer in this opinion. I suggest that you pose questions concerning proposed specific uses of this revenue, rather than asking for broad definitions of "traffic control" and "traffic regulations."

Very truly yours,

SI GARRETT

Attorney General

June 10, 1953.

Hon. T. R. Ward,

Judge of Probate,

Henry County,

Abbeville, Alabama.

Licenses — Taxation.

1. All employees of a person, firm, or corporation engaged in the operation of veneer mills and other business activities described in Title 51, Section 614, Code of Alabama 1940, should be included in determining the amount of privilege license due under the terms of that section.
2. Persons, not employees of such company, who haul veneer to railroads for shipment, are not "engaged in the manufacture of the products" within the meaning of Section 614, *supra*.

3. Sawmill operators who pay privilege license pursuant to Title 51, Section 585, Code of Alabama 1940, are not required to pay a privilege license pursuant to Section 614, supra.
4. Persons paying a privilege license under Title 51, Section 546, Code of Alabama 1940, are exempt from the privilege license under Section 614, supra.
5. One who pays a privilege license under Section 595, supra, is exempt from privilege license required by Section 546, supra.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of March 11, 1953, is as follows:

"Under Section 614, Title 51, of the Code of 1940 the amount of license due on Planing Mills, Veneer Mills, etc. is based on the number of men employed. The said Section further provides that where a person, firm, etc. shall pay the license due under section 585 then no license shall be charged under section 614.

"I have the following questions which I would like for you to answer to clear this Section for me:

"1. Are the men who work directly in the manufacture of the veneer of lumber the only ones counted in ascertaining the amount of the license or are those who transport and do other things connected with the operation counted. In the production of veneer there are a number of men who work in the woods cutting logs, others who haul those logs to the veneer lathe, others who work at the lathe. others who haul the cut veneer to a drying yard where it is stacked for drying, others who haul into a shed for tying and trimming, others who haul several miles to the railroad for shipment and some who load at the railroad for shipment. Which of these men would be counted in arriving at the amount of license due?

"2. Would a person who pays a license under section 585 of Title 51 be exempt from the payment of the license under Section 614 for the operation of a Veneer Mill or planing Mill. In other words would a person paying the license under section 585 be exempt from both the license set out under sections 546 and 614?"

Your first request requires an analysis of the proper measurement of the license imposed on persons, firms, or corporations engaging in the operation of veneer mills and other business activities described in Title 51, Section 614, Code of Alabama 1940. Your request is not clear concerning

whether the men whom you have described are employees of the person, firm, or corporation involved. If they are employees of the company, then all are included in the measurement of the license required by Section 614, *supra*. This is because of the terms of the section which measure the license according to the number of men "employed or engaged in the manufacture of the products." (Emphasis supplied.)

If these men are not employees of the company, then a somewhat difficult question of fact arises as to whether or not they are "engaged in the manufacture of the products." Those who cut the logs, haul them to the veneer lathe, work at the lathe, cut and dry and stack the veneer, tie and trim the veneer, are engaged in the manufacture of the product. These operations seem sufficiently close to production so that those who perform them "engage in the manufacture" of the veneer products. See *Hinton v. Louisiana Central Lumber Company*, (La. App.) 139 So. 554, 557. If those who haul the veneer to railroads for shipment are not employees of the company involved, then it is doubtful that they should be included in the measurement of the license.

As to your second question, the statutes seem clear that one who pays a license fee as a sawmill operator under Section 585 of Title 51, Code of Alabama 1940, is not required to pay the license fee required by Section 614, *supra*. The terms of Section 614 do not include sawmills "licensed under Section 585 of this title." A proviso in Section 585 contains the restrictive language "only one state license shall be paid by the operator of any sawmill."

Payment of a privilege license under Title 51, Section 546, Code of Alabama 1940, exempts planing mills, etc., from payment of a privilege license under Section 614, *supra*. Biennial Report of Attorney General, 1936-1938, page 502. Similarly, the restrictive proviso of Section 585, quoted above, would exempt one who pays a privilege license under that section from the privilege license required by Section 546, *supra*.

Very truly yours,

SI GARRETT

Attorney General

June 11, 1953

Hon. H. E. Lindsey, Chairman

Marion County Board of Revenue

Hamilton, Alabama

Marion County — Sales Tax — Hospitals — Funds.

The proceeds of the Marion County sales tax levied under the provisions of Act No. 115, General and Local Acts 1949, page

139, after June 8, 1952, unless previously pledged, may be used to purchase equipment for the county public clinic in the town of Hackleburg, Alabama.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of May 18, 1953, is as follows:

"Under Local Act Number 81, approved June 8, 1951, the Marion County Board of Revenue constructed a clinic in the Town of Hackleburg, Alabama in accordance with the provisions of said Act. Since that time it has become necessary to trade in some of the equipment which has proven to be inadequate on other equipment which will increase the expenditure on said clinic over and above the statutory limit as provided for in said Local Act in order to properly equip the clinic. This expenditure will be approximately \$6,000 to \$8,000 in excess of said statutory limit provided in the Act.

"Please let me know whether we can legally do this out of the special county sales tax which Marion County is now collecting."

What is commonly called a sales tax was levied in Marion County, Alabama, by Act No. 115, General and Local Acts 1949, page 139. This tax was in addition to the state-wide sales tax.

Section 7 of said Act, *supra*, as amended by Act No. 81, General and Local Acts 1951, page 296, is as follows:

"Section 7. All revenue arising from the taxes herein levied shall be used exclusively and solely for the following purposes: The total revenue arising from the taxes herein levied for the first twenty-four months after the first day of July 1949 must be spent by the Marion County Board of Revenue for the construction and equipping of a County Public Clinic in the Town of Guin, in Marion County, Alabama. Thereafter, the revenue arising from the tax levied hereunder shall be spent by said Marion County Board of Revenue for the maintenance, operation, and improvement of the County Public Hospital located at Hamilton in Marion County, Alabama; and for other public health purposes of any kind and description as in the judgement of said Marion County Board of Revenue is meet and proper. Within 12 months from the adoption of this amendment the Marion County Board of Revenue must issue warrants, notes, bonds, or other evidence of indebtedness against the revenue arising hereunder to the extent of not exceeding Forty Thousand Dollars and within said period must use said funds to construct and equip a County Public Clinic within the Town of Hackleburg in Marion County, Alabama."

From a previous request to this office under date of July 18, 1951, it appears that the Marion County sales tax passed a resolution authorizing

the issuance of \$75,000.00 worth of warrants against the special Marion County sales tax payable over a period of twenty years for the construction of a clinic in the town of Hackleburg, Alabama, and a county public health center at Hamilton, Alabama.

It was held by this office that only \$40,000.00 from the proceeds of said warrants could be used to construct and equip the clinic at Hackleburg, Alabama, the remaining \$35,000.00 to be used for the public health center in Hamilton, Alabama. Quarterly Report of Attorney General, Vol. 64, page 20.

In considering the present request, I am assuming that the \$75,000.00 in warrants were issued as provided in the said resolution, and the proceeds from the said Marion County sales tax were pledged for the payment thereof.

Under Section 7, as amended, *supra*, all revenue for the first twenty-four months after July 1, 1949, from the said tax was to be used solely for constructing and equipping a county public clinic in the Town of Guin in Marion County, Alabama. The twenty-four months having expired, the proceeds from the tax may thereafter be used for the "maintenance, operation, and improvement of the County Public Hospital located at Hamilton in Marion County, Alabama; and for other public health purposes of any kind and description as in the judgment of said Marion County Board of Revenue is meet and proper."

But the amendment to Section 7, *supra*, also provided, "Within 12 months from the adoption of this amendment the Marion County Board of Revenue must issue warrants, notes, bonds, or other evidence of indebtedness against the revenue arising hereunder to the extent of not exceeding Forty Thousand Dollars and within said period must use said funds to construct and equip a County Public Clinic within the Town of Hackleburg in Marion County, Alabama." The amendment to Section 7, *supra*, was approved June 8, 1951.

It seems clear, therefore, that certainly after June 8, 1952, the proceeds of the said tax is available for use for the maintenance, operation, and improvement of the county public hospital at Hamilton, Alabama, and for other public health purposes of any kind and description as in the judgment of the Board of Revenue is proper; subject, however, to valid prior pledges of its use.

In my opinion, the warrants, notes, bonds, or other evidence of indebtedness not exceeding \$40,000.00 to be issued and the money to be spent within the twelve months' period after the adoption of the amendment to Section 7, *supra*, relate to the initial cost of building and equipping the clinic at Hackleburg, Alabama.

If some of the original equipment has proven inadequate or more modern equipment is needed to properly meet the requirements of the clinic, or if the equipment needs replacement for other causes, it is my

opinion that the proceeds from said sales tax can now be used to pay for the needed equipment. The expenditure for such purposes would not, in my judgment, be considered as a part of the initial cost of building and equipping the clinic. *Lang v. City of Mobile*, 239 Ala. 331, 195 So. 248.

It must be kept in mind, however, that the present use of the sales tax may be subject to prior valid pledges thereof for other purposes. If, for example, it has already been pledged to pay the principal and interest on \$75,000.00 in warrants heretofore issued, then the surplus only over and above the requirements for the payment of interest and principal on those warrants as they become due is available for expenditure by the Board of Revenue. *Board of Revenue of Shelby County v. Farson, Son & Co.*, 197 Ala. 703, 72 So. 613. Quarterly Report of Attorney General, Vol. 28, page 150; Vol. 49, page 104.

The language as used in Section 7, as amended, *supra*, is very broad in its scope in giving to the Board of Revenue of Marion County wide discretion in spending the proceeds of the sales tax for public health purposes of any kind and description as in their judgment if necessary and proper. This discretion, when exercised by said Board of Revenue in the expenditure of the sales tax funds for said purposes cannot be questioned, in the absence of clear abuse.

Yours very truly,

SI GARRETT

Attorney General

June 12, 1953

Hon. Leslie Dee, Jr., Chairman

Alabama State Docks Board

Hodo-Weaver Mortgage Company

Tuscaloosa, Alabama

Docks Commission — Funds.

The Alabama State Docks Board has legal authority to reimburse the general fund of the State for that part of principal and interest paid from said general fund on the Harbor Improvement Bonds in excess of the revenues and income of the old harbor facilities available for that purpose at the time the principal and interest installments, respectively, matured and became due.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of May 25, 1953, is as follows:

"Amendment No. 12 to the Constitution of Alabama of 1901 provided, insofar as here pertinent, that:

" ' . . . when authorized by appropriate laws passed by the Legislature the state may at a cost of not exceeding ten million dollars engage in the work of internal improvement, or promoting, developing, constructing, maintaining, and operating all harbors and seaports within the state or its jurisdiction, provided, that such work or improvement shall always be and remain under the management and control of the state, through its State Harbor Commission, or other governing agency . . . '

"Pursuant to said Amendment No. 12, the Legislature enacted Act No. 303, General Acts 1923, page 330, and Act No. 1, General Acts 1927, page

1. These acts are now codified in Title 38, Section 1, et seq., Code of Alabama 1940.

"Under authority of Acts Nos. 303 and 1, supra, the State issued and sold \$10,000,000.00 of Harbor Improvement Bonds, which are general obligations of the State.

"The Legislature, from time to time, has appropriated from the general funds of the State of Alabama monies for the payment of the interest and principal on said bonds, and from the amount so appropriated, the sum of \$1,408,901.78, as interest, and \$3,800,000.00, as principal, has been paid on said bonds from the date of issue to October 1, 1951. These amounts of interest and principal are carried on the balance sheet of Alabama State Docks Board, among its liabilities, as follows: "State Treasurer — Advance for Bond Interest — \$1,408,901. 78,

"State Treasurer — Advance for Bond Retirement — \$3,800,000.00.

"Since October 1, 1951, the State Docks Board has been paying the interest and principal on said bonds from its own revenue and during said time the Legislature has made no further appropriating for these purposes. As of September 30, 1952, Harbor Improvement Bonds in the principal amount of \$5,825,000.00 were still outstanding, but not due.

"In dealing with the proceeds of the handling and operation of the improvements and facilities, the Legislature provided, in Section 10 of Act No. 303, supra, that:

" ' . . . It is intended to so provide that all of the revenues and income arising from the operations authorized hereby and from all property acquired under the provisions hereof shall be devoted to the payment

of the expenses of such operation, to the payment of interest upon the bonds issued pursuant to the provisions hereof, and to the payment of the principal of said bonds as they respectively mature, thus relieving the other revenues of the State from any burden in that behalf unless the aforesaid income be insufficient for the purposes mentioned. The Commission may retain from the money coming into its hands such amount as may reasonably be required for operating capital, and all amounts so retained shall be deemed to be an operating expense within the meaning of this Act.'

"Similar provision was made in Section 11 of Act No. 1, supra, these two sections now appearing in Title 38 as Section 31, Code of Alabama 1940.

"After setting up certain 'sinking fund' requirements for the purpose of paying interest charges of retiring by repurchase such bonds at not more than par, or by paying them off as they matured, it was provided: " ' . . . that whenever the sinking fund thus created exceed the bonds outstanding plus the interest charges maturing within the following twenty-four months, then the surplus shall be available for use in the future development and improvement of the port in question, . . . ' Section 10½, Act No. 303, supra; Section 12, Act No. 1, supra; Title 38, Section 31, Code of Alabama 1940.

"The sinking fund above-mentioned was not established until September 30, 1950.

"In December, 1947, pursuant to the statutory authority contained in Act No. 82, General Acts 1945, page 79, and Act No. 211, General Acts 1947, page 74, the Department of State Docks and Terminals, with the approval of the Governor, issued \$4,000,000.00 of Revenue Expansion program. These bonds were not general obligations of the State of Alabama. To secure the payment of the principal and interest on these bonds, the gross revenues of the facilities acquired in whole or in part with the proceeds was pledged. In addition, there was pledged the gross revenues of the facilities theretofore acquired by the department pursuant to the lease agreement with the City of Mobile. There was also pledged, after first paying existing sinking fund requirements and valid commitments for Harbor Improvement Bonds outstanding and the expense of operating and maintaining the department and its facilities and properties, the remaining gross revenues from the then existing facilities of said department.

"As of September 30, 1952, Expansion Bonds in the amount of \$3,113,000.-00 were still outstanding, but not then due. In the order authorizing the issue of said \$4,000,000.00 in Expansion Bonds, a 'new system revenue fund' was created to be maintained until the principal and interest on all the Expansion Bonds had been paid in full. The entire income and revenues, from day to day, from the operation of the new system was to be paid into this fund.

"A special 'bond fund' was also created to be maintained until the principal and interest on all Expansion Bonds had been paid in full. The entire amount of money paid into the new system revenue fund was to be paid into the bond fund until such time as the amount on deposit in the bond fund was enough to pay the interest and principal on the Expansion Bonds for the next succeeding twenty-four months.

"There was also created a 'bond redemption fund' to be maintained until the Expansion Bonds were paid in full.

"At the end of each fiscal year, there was to be transferred from the new system revenue fund to this fund 20% of the fund after maintaining the bond fund at all times in an amount sufficient to pay all principal and interest on said bonds for the next succeeding twenty-four months. The money paid into the bond redemption fund was for the purpose of retiring in advance of maturity as many of the bonds as possible with the amount available in said fund.

"After the provisions relating to the bond fund and bond redemption fund were compiled with, it was provided that the money remaining in the new system revenue fund at the end of each fiscal year could be used for any lawful purpose directed by the department.

"Revenue Expansion Bonds numbered 2001 to 2020, inclusive, totaling \$2,000,000.00 par value with interest at 3½% were refunded February 9, 1950, and new serial bonds were issued with a par value of \$2,000,000.00 and bearing interest at 3%. These bonds were numbered R-1 through R-2000, inclusive, maturing from one to ten years after date of issue, with two hundred bonds maturing each year with maturities beginning December 1, 1958, through December 1, 1967. The same sinking fund requirements as those contained in the bond order for the original issue are likewise applicable to the refunding bonds.

"It may be well to point out here that the State records show that \$50,000.00 more in interest was paid from the general fund than the \$1,408,901.78 shown by the records of the Alabama State Docks Board.

"Your official opinion is respectfully requested as to whether or not the Alabama State Docks Board has legal authority to reimburse the general fund of the State of Alabama for all or any part of the said \$3,800,000.00 principal, paid from the State's general fund in retirement of the Harbor Improvement Bonds, and the interest, paid from the State's general fund, on said bonds."

By Amendment No. XII to Section 93 of the Constitution of Alabama 1901, the State of Alabama, when authorized by appropriate laws, was given the right to promote, develop, construct, maintain, and operate all harbors and seaports within the State or its jurisdiction through its Harbor Commission or other governing agency. This agency is now the Alabama State Docks Board. Act No. 189, General and Local Acts 1951, page 450.

The Legislature gave effect to Amendment No. XII, supra, by the passage of Act No. 303, General Acts 1923, page 330, and later by Act No. 1, General Acts 1927, page 1. To provide funds for harbor and seaport purposes, the Governor, with the concurrence of the State Docks Commission created by said acts, was authorized to execute and sell the State's bonds not exceeding in the aggregate the sum of \$10,000,000.00, as might be necessary for said purposes. Pursuant to said authority, bonds pledging the full faith and credit of the State of Alabama in amounts aggregating \$10,000,000.00 were issued as follows:

First Issue of \$1,000,000 — 4½% — dated June 1, 1924, payable \$25,000 annually, June 1, 1934, to 1973, both years inclusive.

Second Issue of \$900,000 — 4½% — dated December 1, 1924, payable \$25,000 annually, December 1, 1934, to 1969, both years inclusive.

Third Issue of \$1,100,000 — 4½% — dated January 1, 1926, payable \$25,000 annually, January 1, 1933, to 1976, both years inclusive.

Fourth Issue of \$1,000,000 — 4¼% — dated June 1, 1926, payable \$25,000 annually, June 1, 1936, to 1975, both years inclusive.

Fifth Issue of \$1,000,000 — 4¼% — dated December 1, 1926, payable \$25,000 annually, December 1, 1936, to 1975, both years inclusive.

Sixth Issue of \$1,000,000 — 4¼% — dated May 1, 1927, payable \$25,000 annually, May 1, 1937, to 1976, both years inclusive.

Seventh Issue of \$1,000,000 — 4¼% — dated September 1, 1927, payable \$25,000 annually September 1, 1937, to 1976, both years inclusive.

Eighth and Ninth Issues of \$1,000,000 each — 4¼% — dated December 1, 1927, payable \$25,000 annually, each, December 1, 1937, to 1976, both years inclusive.

Tenth Issue of \$1,000,000 — 4¾% — dated April 1, 1928, payable \$25,000 annually, April 1, 1938, to 1977, both years inclusive.

The amount of interest and principal required to be paid on said bonds through September 30, 1952, is shown by the records of the Alabama State Docks Board to be as follows:

Year	Interest	Retirement	Total
1924			
1925	64,125.00		64,125.00
1926	106,625.00		106,625.00
1927	215,000.00		215,000.00
1928	342,500.00		342,500.00
1929	427,500.00		427,500.00
1930	427,500.00		427,500.00
1931	427,500.00		427,500.00
1932	427,500.00		427,500.00
1933	426,968.75	25,000.00	451,968.75

1934	425,906.25	50,000.00	475,903.25
1935	423,187.50	75,000.00	498,187.50
1936	419,937.50	100,000.00	519,937.50
1937	414,562.50	175,000.00	589,562.50
1938	405,468.75	250,000.00	655,468.75
1939	394,781.25	250,000.00	644,781.25
1940	384,093.75	250,000.00	634,093.75
1941	373,406.25	250,000.00	623,406.25
1942	362,718.75	250,000.00	612,718.75
1943	352,031.25	250,000.00	602,031.25
1944	341,343.75	250,000.00	591,343.75
1945	330,656.25	250,000.00	580,656.25
1946	319,968.75	250,000.00	569,968.75
1947	309,281.25	250,000.00	559,281.25
1948	298,593.75	250,000.00	548,593.75
1949	287,906.25	250,000.00	537,906.25
1950	277,218.75	250,000.00	527,218.75
1951	266,531.25	250,000.00	516,531.25
1952	245,156.25	250,000.00	495,156.25
Total	9,467,968.75	4,175,000.00	13,672,968.75

The records of the Alabama State Docks Board also show the following amounts paid, and from what source, on the principal and interest of the bonds through September 30, 1952:

Year	PAID BY STATE DOCKS COMMISSION		PAID BY STATE
	From Bond Proceeds	From Earnings	
1924			
1925	64,125.00		
1926	106,625.00		
1927	193,750.00		21,250.00
1928	342,500.00		
1929	86,379.47	72,000.00	269,120.53
1930		183,875.00	243,625.00
1931		253,812.50	173,687.50
1932		227,500.00	200,000.00
1933		242,843.75	209,125.00
1934		275,531.25	200,375.00
1935		254,625.00	243,562.50
1936		419,937.50	100,000.00
1937		414,562.50	175,000.00
1938		405,468.75	250,000.00
1939		396,625.00	250,000.00
1940		384,093.75	250,000.00
1941		373,406.25	250,000.00
1942		362,718.75	250,000.00
1943		477,031.25	125,000.00
1944		341,343.75	250,000.00
1945		330,656.25	250,000.00

1946	319,968.75	250,000.00
1947	309,281.25	250,000.00
1948	298,593.75	250,000.00
1949	287,906.25	250,000.00
1950	277,218.75	250,000.00
1951	266,531.25	250,000.00
1952	495,156.25	
1939 Less amount remitted in excess of Interest Maturities		1,843.75
Total	793,379.47	5,208,901.78

It was provided in said Acts Nos. 303 and 1, supra, in Section 10½ and 12 thereof, respectively, that after twelve months from the completion of each unit authorized thereby, but not before October 1, 1927, one-half of one per cent of the cost thereof, not to exceed one-half of the gross income therefrom during each month, should be credited at the end of each month to an account designated "sinking fund." It was further provided that said account should be used only for the purpose of paying interest charges and of retiring by repurchase such bonds at not more than par, or by paying them off as they matured until all the bonds should have been retired. When, however, the sinking fund exceeded the bonds outstanding plus the interest charges maturing within the following twenty-four months, then the surplus was available for use in the future development and improvement of the port in question.

The provisions of said Acts Nos. 303 and 1, supra, were codified, with certain changes, in the Code of Alabama 1940 as Section 32, Title 38. One of the changes was to provide that the one-half of one per cent of the cost of the unit required to be paid into the sinking fund should not exceed one-half of the net income instead of one-half of the gross income.

By Act No. 83, General Acts 1945, page 83, said Section 32, supra, was amended to provide payments into the sinking fund on a yearly basis instead of a monthly basis, and on all units instead of each separate unit.

It appears from a report of Hon. C. L. Butler, Examiner of Public Accounts, to Hon. Ralph P. Hagerton, Chief Examiner of Public Accounts of the State of Alabama, concerning the operations of the State Docks and Terminals that the years 1924 through 1928 were considered the construction period for the old or original units built or acquired from the proceeds of the \$10,000,000.00 Bond Issue. The old or original units and the cost of each is stated to be as follows:

1. Docks Department, Cost \$5,678,139.04,
2. Cotton Warehouse, Cost \$612,059.13,
3. Terminal Railway, Cost \$1,969,635.01.
4. Bulk Material Handling Plant, Cost \$956,117.61.
5. Miscellaneous and Industrial Lands, Cost \$784,049.21.

Total cost \$10,000,000.00.

It is also stated in said report that the cold storage plant, bulk material warehouse, and Pier "C" North were purchased subsequently and not from the proceeds of said bond issue.

The amounts necessary for the sinking fund required by law for the payment of said bonds and interest through September 30, 1952, is shown by the records of the Alabama State Docks Board to be as follows:

Sinking Fund Deposits Required		
Period Ending		
September 30, 1930:		\$ 168,880.84
Fiscal Year Ending		
Sept. 30:	1931	\$ 359,183.14
	1932	269,793.01
	1933	303,478.05
	1934	316,606.98
	1935	298,257.68
	1936	373,078.67
	1937	481,499.53
	1938	483,571.67
	1939	515,095.88
	1940	456,593.58
	1941	203,633.57
	1942	258,141.90
	1943	321,624.89
	1944	311,420.46
	1945	391,888.43
	1946	493,170.82
	1947	600,000.00
	1948	600,000.00
	1949	288,178.88
	1950	271,860.58
	1951	275,125.61
	1952	309,968.20
	1952 Interest on Investments	9,164.40
	Totals	\$8,360,216.82

There was no sinking fund established by any of the agencies operating the harbor and seaport facilities by whatever name designated and none existed until September 30, 1950, at which time said sinking fund was first established.

Section 10 of said Act No. 303, supra, states how the proceeds from the said facilities and improvements shall be applied and used. This section provides as follows:

"The proceeds of the handling and operation of the improvements and facilities hereby authorized shall be applied and used as follows: All expenses of carrying out the purposes of this Act shall be paid from said proceeds. Not less than thirty days before each semi-annual date

upon which interest matures on the bonds hereby authorized, or any installment of principal matures, the secretary-treasurer of the Commission shall pay to the State Treasurer from such receipts an amount sufficient to cover such installment of interest or principal, and therefrom the State Treasurer shall pay such interest or principal. If the receipts of the Commission be insufficient to cover any expense herein provided for, or any installment of interest or principal, the deficiency may be paid from the proceeds of any sale of bonds hereby authorized, provided that such use of said proceeds shall be limited to the payment of expenses and interest on bonds for only the first three years after the completion and putting into operation of the unit or improvement acquired with the proceeds of such bonds, or the amount necessary for the payment of such interest may be obtained from temporary loans negotiated therefor as hereinbefore authorized. It is intended to so provide that all of the revenues and income arising from the operations authorized hereby and from all property acquired under the provisions hereof shall be devoted to the payment of the expenses of such operation, to the payment of interest upon the bonds issued pursuant to the provisions hereof, and to the payment of the principal of said bonds as they respectively mature, thus relieving the other revenues of the State from any burden in that behalf unless the aforesaid income be insufficient for the purposes mentioned. The Commission may retain from the money coming into its hands such amount as may reasonably be required for operating capital, and all amounts so retained shall be deemed to be an operating expense within the meaning of this Act."

Section 10, *supra*, was re-enacted in 1927 as Section 11 of Act No. 1, *supra*, with certain changes not here material. This section is now codified in the Code of Alabama 1940 as Section 31, Title 38, and is as follows:

"The proceeds of the handling and operation of the improvements and facilities authorized shall be applied and used as follows: All expenses of carrying out the purposes of this chapter shall be paid from said proceeds. Not less than thirty days before each semi-annual date upon which interest matures on the harbor improvement bonds, or any installment of principal matures, the secretary-treasurer of the department shall pay to the treasurer from such receipts an amount sufficient to cover such installment of interest or principal. It is intended to so provide that all of the revenues and income arising from the operations authorized hereby and from all property acquired under the provisions hereof shall be devoted to the payment of the expenses of such operation, to the payment of interest upon the bonds issued pursuant to the provisions hereof, and to the payment of the principal of said bonds as they respectively mature, thus relieving the other revenues of the state from any burden in that behalf unless the aforesaid income be sufficient for the purposes mentioned. The department may retain from the money coming into its hands such amount as may reasonably be required for operating capital, and all amounts so re-

tained shall be deemed to be an operating expense within the meaning of this chapter”

It is further provided by Section 11 of Act No. 303, supra, by Section 13 of Act No. 1, supra, and by Section 33 of Title 38, Code of Alabama 1940, that if the funds supplied by the docks agency, through its secretary and treasurer, to the State Treasurer, be insufficient to fully pay and installment of interest on said bonds or to pay at maturity the principal of any of said bonds, “then the deficiency shall be paid by the treasurer from any funds in the treasury not otherwise appropriated.” (Emphasis supplied.)

The phrase “not otherwise appropriated” was construed by this office to be an unconditional appropriation out of the general funds of the State. Biennial Report of Attorney General 1922-24, page 370.

Such an appropriation of an ascertainable amount is valid and does not offend Section 72 of the Constitution of 1901. *State v. Henderson*, 199 Ala. 244, 74 So. 344; *Norton v. Lusk*, 248 Ala. 110, 26 So. 2d 849.

It further appears from the report of Mr. Butler and the report of Hon. Roland L. Lowman, Examiner of Public Accounts, supplementing the same, that the net profits from the operations of the old or original units of the State Docks and Terminals, from April 1, 1929, to September 30, 1952, were as follows:

April 1, 1930, to March 31, 1931	\$ 249,386.89
April 1, 1931, to March 31, 1932	323,614.36
April 1, 1932, to March 31, 1933	216,809.13
April 1, 1933, to March 31, 1934	303,312.70
April 1, 1934, to March 31, 1935	219,956.18
April 1, 1935, to September 30, 1935	119,904.84
October 1, 1935, to September 30, 1936	342,420.63
October 1, 1936, to September 30, 1937	472,552.69
October 1, 1937, to September 30, 1938	512,290.92
October 1, 1938, to September 30, 1939	522,539.61
October 1, 1939, to September 30, 1940	479,668.22
October 1, 1940, to September 30, 1941	395,511.73
October 1, 1941, to September 30, 1942	577,514.96
October 1, 1942, to September 30, 1943	730,031.95
October 1, 1943, to September 30, 1944	717,098.98
October 1, 1944, to September 30, 1945	949,642.94
October 1, 1945, to September 30, 1946	986,341.64
October 1, 1946, to September 30, 1947	1,520,713.68
October 1, 1947, to September 30, 1948	1,289,357.96
October 1, 1948, to September 30, 1949	656,841.42
October 1, 1949, to September 30, 1950	579,261.92
October 1, 1950, to September 30, 1951	578,856.88
October 1, 1951, to September 30, 1952	875,164.49
Net earnings reported 1929	290,295.13
Total	\$13,907,089.85

During this period of time, depreciation in the amount of \$2,532,723.99 was deducted and the net earnings shown above are after depreciation, which was for the first time deducted from earnings during the fiscal year ending September 30, 1936. This office has held that depreciation is part of the maintenance and operation expenses of the State Docks and Terminals. Quarterly Report of Attorney General, Vol. 46, page 37.

For the fiscal years ending September 30, 1924, through September 30, 1935, the Legislature made no specific appropriation of a fixed amount for the payment of interest and principal on the Harbor Improvement Bonds. By Act No. 373, General Acts 1935, page 792, the Legislature did make an appropriation for the fiscal years ending September 30, 1936, 1937, 1938, and 1939, as follows: For the fiscal year ending September 30, 1936, \$100,000.00; for 1937, \$175,000.00; for 1938, \$250,000.00; for 1939, \$250,000.00. In addition, said Act appropriated \$300,000.00 for interest on Harbor Improvement Bonds and Warrant Refunding Bonds, with a proviso that any part of the appropriation for the payment of interest on Harbor Improvement Bonds and on Warrant Refunding Bonds not required for such purpose was to be used to create a sinking fund for the retirement of other designated bonds.

By Act No. 247, General Acts 1939, page 411, the appropriation for the fiscal years ending September 30, 1940, 1941, 1942, and 1943, was as follows:

“ . . . For principal and interest on Harbor Improvement Bonds: A sufficient sum to pay the principal and interest on outstanding Harbor Improvement Bonds as they severally mature, that is not provided for by the receipts of the Department of State Docks and Terminals . . . ”

By Act No. 63, General Acts 1943, page 52, for each of the fiscal years ending September 30, 1944, and 1945, there was appropriated for principal on outstanding Harbor Improvement Bonds, \$250,000.00; for interest for the fiscal year ending September 30, 1944, \$341,343.75; for interest for the fiscal year ending September 30, 1945, \$330,656.25.

By Act No. 145, General Acts 1945, page 163, for each of the fiscal years ending September 30, 1946, and 1947, there was appropriated for principal on outstanding Harbor Improvement Bonds, \$250,000.00; for interest for the fiscal year ending September 30, 1946, \$319,968.75; for interest for the fiscal year ending September 30, 1947, \$309,281.25.

By Act No. 320, General Acts 1947, page 183, for each of the fiscal years ending September 30, 1948, and 1949, the appropriation was for principal on outstanding Harbor Improvement Bonds, \$250,000.00; for interest for the fiscal year ending September 30, 1948, \$298,593.75; for interest for the fiscal year ending September 30, 1949, \$287,906.25.

By Act No. 522, General and Local Acts 1949, page 781, the appropriation for each of the fiscal years ending September 30, 1950, and September 30, 1951, was for principal on outstanding Harbor Improvement Bonds, \$250,000.00; for interest for the fiscal year ending September 30, 1950, \$277,218.75; for interest for the fiscal year ending September 30, 1951, \$266,531.25.

There appears to be no appropriation for the payment of principal or interest on said bonds for the fiscal years ending September 30, 1952, and September 30, 1953, other than that which is made by Section 33 of Title 38, Code of Alabama 1940.

Under the authority given by Act No. 211, General Acts 1947, page 74, the State, through its Department of State Docks and Terminals, with the consent of the Governor, issued \$4,000,000.00 of State Docks Expansion Revenue Bonds for the expansion and enlargement of its seaport facilities. Bonds numbered 1 through 2,000 are serial bonds bearing interest at 3½%, dated December 1, 1947. These bonds are in denominations of \$1,000.00 each and are due \$200,000.00 a year beginning December 1, 1948, and running through December 1, 1957.

Bonds numbered 2001 through 2020 were term bonds bearing interest at 3½%, dated December 1, 1947. These bonds are in denominations of 100,000.00 each and are due December 1, 1967.

The term bonds were refunded on February 9, 1950, by the issuance of 3% Refunding Bonds, dated December 1, 1947, in \$1,000.00 denominations each and maturing \$200,000.00 a year, beginning December 1, 1958, and running through December 1, 1967.

The principal and interest on the Expansion Revenue Bonds and Refunding Bonds are secured by the pledge of the gross revenues from the facilities acquired in whole or in part with the proceeds of the bonds; the gross revenues of the facilities theretofore acquired from the City of Mobile pursuant to a lease agreement with the City of Mobile; the gross revenues from the cold storage plant, Pier C North, and the bulk material warehouse. There was also pledged the gross revenues from the then existing facilities of the department after payment therefrom of the sinking fund requirements and valid commitments for the Harbor Improvement Bonds then outstanding, and the expense of operating and maintaining said department and its facilities and properties.

The bond order created a fund designated "new system revenue fund" to be maintained until the principal and interest on all the bonds shall have been paid in full. The entire income received by the department, from day to day, from the operation of the new system was required to be paid into this fund. The fund was to be paid out for the following purposes and in the following order:

1. There was created a "bond fund" to be maintained until the principal of, and interest on, all the bonds were paid in full. As moneys are paid into the new system revenue fund, the entire amount is paid into the bond fund until the amount therein is sufficient to pay the entire interest and principal payable on the bonds for the next succeeding twenty-four months, the fund to be so maintained at all times.

2. There was created a "bond redemption fund" to be maintained until the principal and interest on all the bonds were paid in full. At the end

of each fiscal year, there is to be transferred from the new system fund and paid into the bond redemption fund 20% of the amount remaining in the new system revenue fund after all payments provided for are made to the bond fund. The moneys so paid into the bond redemption fund are to be used solely for retiring in advance of maturity as many bonds as possible with the amount available therein.

There was further provided in the bond order that after the provisions with reference to the bond fund and bond redemption fund were complied with, the new system revenue funds remaining at the end of any fiscal year could be used for any lawful purpose directed by the department.

The bond order also created the "old system revenue fund" to be maintained until the principal of, and interest on, all the Expansion Revenue Bonds were paid in full. The entire revenue, from day to day, from the old system was to be paid into this fund. Disbursements from this fund were to be made for the following purposes and in the following order only:

1. The reasonable and proper expenses of operating and maintaining the department and system;
2. All payments required therefrom for existing valid commitments, including payment of the principal and interest on the Harbor Improvement Bonds;
3. To supplement any moneys in the new system revenue fund at the end of each fiscal year to make up any deficiency in the bond fund and bond redemption fund, the intention being that the revenue from the operation of the old system, subject to the payment therefrom of the existing valid commitments and expenses of maintaining and operating the department and the system, should be available and used for the payment of the principal and interest on the bonds in the same manner as the gross revenues of the new system are to be used for such purposes. It was further provided that any remaining money, after said above payments were made, could be used for any lawful purposes directed by the department.

The bond order defined "department," "system," "old system," and "new system" to be the following:

Alabama, an agency of

"'Department' means the Department of State Docks and Terminals of Alabama, an agency of the State of Alabama, and any successor to its functions,

"'System' means all of the properties and facilities of the Department, whether real or personal and whether held by the Department as owner, lessee or otherwise, at the time of the issuance of the first of the bonds, including but without limitation, intangible properties, contracts, franchises, leases and choses in action, and all properties and facilities hereafter acquired with the proceeds of

the bonds, but not including any real or personal properties heretofore or hereafter acquired by the Department for future development south of the real property specifically described in Section Nine hereof.

“‘Old system’ means the portion of the system now owned or otherwise held by the Department, together with all additions, improvements and personal properties hereafter made or acquired with respect thereto, but not including the following: the portion of the system heretofore acquired pursuant to lease agreements with the City of Mobile; and the portion of the system specifically described in Section Nine hereof together with all improvements and equipment heretofore or hereafter constructed or placed thereon.

“‘New system’ means the portion of the system not included in the old system.”

The gross revenues available for and directed by the bond order to be paid into the new system revenue fund are shown by Mr. Lowman's report to be as follows:

Fiscal year ending September 30, 1948	-----	\$ 294,141.06
Fiscal year ending September 30, 1949	-----	312,171.04
Fiscal year ending September 30, 1950	-----	487,583.31
Fiscal year ending September 30, 1951	-----	562,230.36
Fiscal year ending September 30, 1952	-----	661,338.52
Total	-----	<u>\$2,317,464.29</u>

The report further shows that, after meeting all of the sinking fund requirements of the different funds set up and designated in the bond order, the approximate sums of \$218,237.11 for the fiscal year ending September 30, 1951, and \$279,526.82 for the fiscal year ending September 30, 1952, were returned by the trustee of said funds to the State Docks Board, as authorized in the bond order, to be used for any lawful purpose directed by it.

It is estimated by the State Docks Board that, based upon the present operation of the new facilities, the gross revenues therefrom average about \$720,000.00 per year.

According to the annual report of the Alabama State Docks Board for the fiscal year ending September 30, 1952, there remained outstanding and unpaid at said time \$5,825,000.00 of Harbor Improvement Bonds and \$3,113,000.00 of Docks Expansion Revenue Bonds.

It is mandatory on the agency handling and operating the harbor and seaport improvements and facilities constructed or acquired from the \$10,000,000.00 Bond Issue to devote the entire proceeds therefrom, after the

payment of the operating expenses, which include a reasonable amount retained for working capital, to the payment of interest and principal upon the Harbor Improvement Bonds as they respectively mature, "thus relieving the other revenues of the state from any burden in that behalf unless the aforesaid income be insufficient for the purposes mentioned." Section 10, Act No. 303, supra; Section 11, Act No. 1, supra; Section 31, Title 38, Code of Alabama 1940, supra.

The State Docks Board is an agent or trustee of the funds received by it from the operation of the dock facilities. It holds the funds as such and not as funds owned by it as an individual or corporation owns its property and effects. *State Docks Commission v. Barnes*, 225 Ala. 403, 143 So. 581.

There is nothing contained in Act No. 82, General Acts 1945, supra; Act No. 211, General Acts 1947, supra; or the bond order relative to the Harbor Expansion Revenue Bonds which can or should be construed in any way so as to interfere with the provisions of the law devoting the revenues and income arising from the operations of the old facilities acquired from the proceeds of the Harbor Improvement Bonds to the payment of interest and principal thereon. *Opinion of the Justices*, 247 Ala. 663, 26 So. 2d 103; *Opinion of the Justices*, 249 Ala. 180, 30 So. 2d 715.

Where the principal or interest on the bonds is not paid in whole or in part from the proceeds of the sale of the Harbor Improvement Bonds or from the proceeds of loans, payment is made from the income and revenues of the old facilities or the general fund, one or both.

It is clear in such cases that the only appropriation made, and the only expenditure authorized by law from the general fund, is for the payment of principal and interest in the amount, and in that amount only, which is necessary to make up the difference between the amount available for said purpose from the revenues and income of the old facilities and that which is actually required. Any expenditure from the general fund in excess of such deficiency, or any expenditure at all from the general fund, when the revenue and income from the old facilities is sufficient for that purpose is unauthorized and illegal.

In *Smith v. Speed*, 50 Ala. 276, the Court said:

"... The provision (section 72, Constitution of 1901) is mandatory to the treasurer, not to pay, and to the other executive officers, not to draw public money except in pursuance of an appropriation made by law. . . ."

The appropriation made by Section 10, Act No. 303, supra, and continued by Section 11, Act No. 1, supra, and Section 31, Title 38, of the Code, supra, is, in my opinion, an unconditional, continuing appropriation for the difference only between the amount of the principal and interest required for the payment of the Harbor Improvement Bonds and the revenue and income for that purpose available from the operations of the old facilities.

The fact that the maximum amount required for the payment of principal and interest, if no income and revenue at all for the payment thereof is available, was contained in some of the appropriation bills, *supra*, does not, in my opinion, alter, modify, suspend, or repeal the said unconditional continuing appropriation for the difference only, as set forth above. This is the plain legislative intent and it should be given effect. 59 C. J., States, 257; *Reynolds v. Taylor*, 43 Ala. 420; *Riggs v. Brewer*, 64 Ala. 282; *Eagerton v. Graves*, 252 Ala. 326, 40 So. 2d 417.

The total net profits from the operations of the old or original units from April 1, 1930, plus those reported in 1929, through September 30, 1952, is \$13,907,089.85. The total amount needed for the payment of principal and interest on the Harbor Improvement Bonds for that period is \$13,672,968.78. It could be argued, therefore, that the income being sufficient during that time for the payment of the entire principal and interest, the general fund should not have been called upon to pay any amount, as against the \$5,208,901.78 which it did pay.

It is my opinion, however, that the better view is that the Legislature intended the general fund to bear its part to the extent of any deficiency between the income and revenue available for that purpose from the operations of the old facilities and the amount required to pay the principal and interest existing at the time each installment of principal or interest matured or became due.

Since the earnings and amounts necessary to pay principal and interest are stated in figures for each fiscal year, it is my suggestion that the amount of the deficiency be determined in a practical manner by using the figures on a fiscal year basis. For example, if the amount necessary to pay the principal and interest for the fiscal year ending September 30, 1941, was \$623,406.25, and the income available for that fiscal year was \$395,511.75, the general fund would pay for that year \$227,894.50. Then again, if the earnings for the fiscal year ending September 30, 1947, were \$1,520,713.68, and the amount required for principal and interest for that fiscal year was \$559,281.25, the general fund would not be called upon to pay any amount, for no deficiency existed.

By refunding to the general fund the amount of money which the Docks agencies should have paid to the state treasurer from time to time from the revenues and income to relieve the general fund to that extent from the payment of principal and interest on the bonds as they matured, the State Docks Board is in effect only doing now what the law required the Docks agencies to do then.

It is my opinion, therefore, that the State Docks Board has legal authority to reimburse the general fund for that part of the principal and interest paid from the general fund in excess of that required by law to be paid from said fund for the retirement of the principal and interest on the Harbor Improvement Bonds. Title 55, Section 106, Code of Alabama 1940.

Opinion of the Justices, 237 Ala. 382, 186 So. 724. Quarterly Report of Attorney General, Vol. 63, page 68.

The refund should be made, however, in such manner as not to impair or interfere with the provisions of the law devoting the revenues and income from the operations of the old facilities to the payment of the expenses of operation and the future payment of the principal of, and interest on, the still outstanding Harbor Improvement Bonds of the State and other valid prior commitments.

Yours very truly,

SI GARRETT

Attorney General

June 18, 1953

Hon. Jim Darden

Tax Assessor

Chambers County

LaFayette, Alabama

Ad Valorem Taxes — Taxation — Homesteads — Exemptions.

A purchaser who is occupying, as a homestead, real property under an executory contract of sale, providing that the vendor will execute a deed of conveyance when the purchase price installment payments have been completed, may claim homestead exemption from state ad valorem taxes.

Opinion by Assistant Attorney General Sanders.

Dear Sir:

Your request for an official opinion, bearing date of June 8, 1953, is as follows:

"This is to request an opinion from you as to the right of an individual to claim a homestead exemption from taxes on a homestead occupied by him under a contract of sale, which he assesses as owner and on which he pays the taxes.

"In this particular instance the West Point Manufacturing Co., a domestic corporation, is selling to its employees the homes which they

now occupy, and which are owned by the West Point Manufacturing Co. "The sales are being made by use of an instrument called a 'Contract of Sale,' a copy of which is attached hereto.

"Would a buyer under this contract, who is occupying his home and assessing it for taxes, be allowed to claim a homestead exemption from taxes?"

The contract which you have submitted provides for the purchase from the seller of specified realty at a purchase price payable in weekly installments for a period of 520 weeks. The purchaser is authorized to take possession as of the date of the contract and he agrees to pay all taxes and assessments against the property. There is provision for the conveyance of the property by deed when the purchase price is paid in full, or the seller may, at its option and before such time, convert the contract into a deed with a purchase money note and mortgage. The contract obviously contemplates that title is to remain in the seller until such time as a deed of conveyance is executed.

This contract in pertinent aspects is similar to that involved in a previous consideration by this office of this identical question (Quarterly Report of Attorney General, Vol. 8, page 62). It was there held that a purchaser, occupying property as a homestead and pursuant to a contract of sale, but without a conveyance of title, may claim the homestead exemption from state ad valorem taxes insofar as his property conforms to lawful area and assessed value as prescribed by Title 51, Section 15, Code of Alabama 1940. I believe that this former ruling should be controlling in the present situation and consequently that the purchasers here involved may claim the exemption.

It has been frequently stated that ownership of property in fee simple is not essential to a claim of homestead rights; a beneficial interest, for instance, will suffice. The reason is that homestead rights are granted solely for the purpose of protecting the individual's dwelling place; consequently, any estate or interest in that dwelling place will qualify. Constitution of Alabama 1901, Section 205; Title 7, Section 625, Code of Alabama 1940; *Watts v. Gordon*, 65 Ala. 546; *Tyler v. Jewett*, 82 Ala. 93, 2 So. 905.

It is well settled that a vendee of real property, in possession under an executory contract of sale (such as that here involved) is liable to be taxed as the owner. *State v. White Furniture Co.*, 206 Ala. 575, 90 So. 896. The equitable title which such a vendee possesses has almost universally been held sufficient upon which to assert, in an appropriate case, a claim for homestead exemption. *Burrow v. Clifton*, 186 Ala. 297, 65 So. 58; *Munchus v. Harris*, 69 Ala. 506; annotation, 89 A. L. R. 531. And see Quarterly Report of Attorney General, Vol. 7, page 68, in which it was held that a purchaser under a lease sale contract may claim the homestead exemption from ad valorem taxes.

These authorities compel the conclusion that purchasers of realty under a contract such as the one you have submitted are entitled to claim the exemption provided by Title 51, Section 15, supra. You are reminded, however, that the tax lien for the current tax year, that is, for taxes due and payable October 1, 1953, attached as of October 1, 1952, against the then owners, and consequently no exemption for the current year can be claimed in the case of a sale made subsequent to that date. Purchasers making their purchase prior to October 1, 1953, should assess the property for taxes due in 1954 and, to the extent allowable, may claim the homestead exemption.

Very truly yours,

SI GARRETT

Attorney General

June 25, 1953

Hon. Bob Moore, Jr.

County Solicitor

Marion County

Hamilton, Alabama

County Courts — Justices of the Peace — Notary Public —
Marion County.

1. Act No. 15, General Acts 1953, approved May 20, 1953 (Ms.), removes jurisdiction over criminal and quasicriminal matters from justices of the peace and notaries public ex officio justices of the peace to the County Court of Marion County.
2. Cases pending before the justices of the peace in Marion County upon the effective date of Act No. 15, supra, should be transferred to the County Court of Marion County.
3. Bastardy proceedings are of a quasi-criminal nature and such cases should be transferred from justice of the peace courts of Marion County to the County Court of Marion County.
4. Justice of the peace and notaries public ex officio justices of the peace have authority under the provisions of Act No. 15, supra, to enter an order transferring criminal and quasi-criminal cases pending before them to the County Court of Marion County, and should send a complete file in such cases to said court.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of June 12, 1953, is as follows:

"Act No. 15 of the 1953 Legislature withdraws criminal jurisdiction from Justices of the Peace in Marion County, vesting such jurisdiction in the County Court.

"On May 20, 1953 there were some two hundred traffic cases pending in our Marion County J. P. Courts. One bastardy case is pending. Too, our officers hold about twelve alias and other writs of arrest issued by such J. P.'s.

"Will you please advise at your earliest convenience as to your opinion on the following:

"1. May the Marion County Justice of the Peace, or Notary's Public ex. off. Justice of the Peace exercise jurisdiction in criminal cases pending before them prior to the effective date of said act?

"2. May they exercise such jurisdiction in a bastardy proceeding?

"3. If not permissible for the Justice to try such cases, should such cases be transferred to the County Court, and if so, under what proceeding?"

Your questions numbered 1 and 2 are answered in the negative. In answer to your question numbered 3, you are advised that justices of the peace and notaries public ex officio justices of the peace in Marion County may enter an order transferring such cases to the County Court of Marion County, and send the complete file to said court.

Act No. 15, General Acts 1953, approved May 20, 1953 (Ms.), provides as follows:

"Section 1. All criminal and quasi-criminal jurisdiction of whatever kind, whether final or for the purpose of binding over to await the action of the grand jury, is hereby withdrawn away from justices of the peace and notaries public with powers of justices of the peace within the boundaries of Marion County, Alabama. Justices of the peace and notaries public ex officio justices of the peace who are now or who may hereafter be elected or appointed for any portion of the territorial limits herein mentioned shall have and exercise civil jurisdiction only. "Section 2. All criminal and quasi-criminal jurisdiction heretofore vested in and exercised by justices of the peace and notaries with

powers of justices of the peace within the boundaries of Marion County is hereby vested in the County Court of Marion County, Alabama.

"Section 3. All laws or parts of laws in conflict with this Act are hereby repealed.

"Section 4. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law."

You will note that all criminal and quasi-criminal jurisdiction is taken away from the justices of the peace and notaries public ex officio justices of the peace in Marion County. Said criminal and quasi-criminal jurisdiction is given to the County Court of Marion County. As I interpret the Act, it was effective immediately on May 20, 1953, at 5:30, p.m. After that time justices of the peace and notaries public ex officio justices of the peace were without authority to exercise jurisdiction in criminal and quasi-criminal cases whether said cases were pending at that time or not. As a bastardy case is a quasi-criminal case, justices of the peace would not have authority to try cases after the above date. **Dorgan v. State**, 72 Ala. 173.

It is further my opinion that justices of the peace and notaries public ex officio justices of the peace in Marion County are authorized to enter an order on their docket transferring all criminal and quasi-criminal cases to the County Court of Marion County. The order should recite that it is made under the authority of Act No. 15, supra. Of course, the complete file in the case should be forwarded along with the order to the County Court of Marion County, Alabama.

Very truly yours,

SI GARRETT

Attorney General

June 30, 1953.

Hon. T. C. Almon,

Judge of Probate,

Morgan County,

Decatur, Alabama.

License Tags — Licenses — Motor Vehicles.

A station wagon, designed and used primarily for private passenger purposes and owned by a corporation, should be licensed

under the provisions of Act No. 315, General and Local Acts 1951, page 610 (Title 51, Section 693(1), 1951 Cumulative Pocket Part, Code of Alabama 1940).

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion bearing date of June 24, 1953, is as follows:

"I would like to request your opinion as to whether a station wagon is properly licensed with a \$3.00 tag purchased under the provisions of Section 693 (1) of Title 51, Code of Alabama of 1940, when the station wagon is owned by a corporation and used in the business of the corporation for its private use in transportation of passengers. The corporation in question keeps the station wagon for its private use in running errands of various kinds, taking mail to and from the post office, and in transporting its employees and individuals with whom it has business transactions in and about Decatur, Alabama. The representatives of the corporation state that the vehicle is not used for transportation of property, or in the sense that a truck is generally used, but that its use is identical to the use made by it of other motor vehicles which take the \$3.00 license. The question is whether 'private passenger purposes' applies to a business institution, or whether the fact that it is operated by a business institution makes its use commercial, and requires a commercial license."

Act No. 976, General and Local Acts 1951, page 1650 (Title 51, Section 692(1), 1951 Cumulative Pocket Part, Code of Alabama 1940), provides as follows:

"Section 1. Station wagons, jeeps, and similar motor vehicles which are kept for private use and are designed primarily for the transportation of passengers shall be taxed, rated, and classified on the same basis as other passenger automobiles kept for private use of the same size or weight; and where used in any statute, rule, regulation, or order, the term 'passenger automobile' or 'passenger motor vehicle' shall include station wagons, jeeps, and similar vehicles which are kept for private use as passenger cars, unless a contrary meaning is obvious."

Act No. 315, General and Local Acts 1951, page 610 (Title 51, Section 693(1), 1951 Cumulative Pocket Part, Code of Alabama 1940), provides as follows:

"Section 1. Any other provision of law to the contrary notwithstanding, the license and registration fee on automobiles (the term 'automobiles' shall include, but shall not be limited to, Jeeps, station wagons, and

other motor vehicles of similar construction) designed and used primarily for private passenger purposes and motorcycles shall be three dollars.

"Section 2. That the statutes providing for the purchase of a motor vehicle license on a monthly declining or half-year basis shall not apply to any automobile licensed and registered under the provisions of this Act."

It is my opinion that a station wagon, designed and used primarily for private passenger purposes and owned either by an individual or a corporation, should be licensed under the provisions of Act No. 315, supra (Section 693(1), supra). The word "private" as used in the above statutes does not limit the license prescribed therein to an individual person.

Yours very truly,

SI GARRETT

Attorney General

June 30, 1953

Hon. Emmett Perry

Solicitor

Tenth Judicial Circuit

Jefferson County

Birmingham, Alabama

Extradition — Nonsupport — Costs and Fees — Counties.

Cost of extradition under Act No. 879, General and Local Acts 1951, page 1515, should not be paid by the state, but should be a charge upon the county as provided in Title 15, Section 72, Code of Alabama 1940, and Title 34, Section 101, Code of Alabama 1940.

Opinion by Assistant Attorney General Lee.

Dear Sir:

Your request for an official opinion bearing date of June 15, 1953, is as follows:

"On September 24, 1953, a Petition for Reciprocal Support was filed

in the Tenth Judicial Circuit by Ruth Wagner against George Russell Wagner, a resident of Perry County, Indiana. On March 9, 1953, a decree was rendered in the Circuit Court of Perry County, Indiana, awarding the Petitioner \$80.00 per month. On June 5, 1953, I was advised by Ivan B. Miller, Prosecuting Attorney for the Seventieth Judicial Circuit of Indiana that the Respondent was \$200.00 in arrears and had defied the order of the Court and suggesting that we proceed with extradition here.

“Section 5 of our Reciprocal Support Act reads as follows:

“The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom.”

“My question is: Will the State pay for the cost of extradition in the same manner that they do in felony cases?”

Title 15, Section 72, Code of Alabama 1940, provides in part:

“When the punishment of the crime shall be the confinement of the criminal in the penitentiary, or by death, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the comptroller; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. . . .”

This section provides that the cost of extradition will be paid by the state in instances where the punishment of the accused is confinement in the penitentiary or by death. In all other instances the expenses are to be paid by the county treasury in the county wherein the crime is alleged to have been committed. Quarterly Report of Attorney General, Vol. 24, page 79.

Section 5 of Act No. 879, General and Local Acts 1951, page 1515, provides in part that:

“The Governor of this state (1) may demand from the Governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state. . . .”

Title 34, Section 90, Code of Alabama 1940, provides that a husband or parent failing to provide for support and maintenance of his wife or who refuses to provide for the support and maintenance of his child “shall be guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not exceeding one hundred dollars, or be sentenced to a term in

the county jail, or at hard labor for the county for a period of not more than twelve months, or the fine may be in addition to either the sentence to jail or to hard labor."

It is clear that failure to provide support in Alabama is not such a crime that would be punishable by confinement in the penitentiary or by death, but is a misdemeanor. Title 34, Section 101, Code of Alabama 1940, provides the procedure for payment of costs for extradition in desertion and nonsupport cases. Therefore, it is my opinion that the cost of extradition under Act No. 879, supra, should not be paid by the state, but should be a charge upon the county as provided in Section 72, supra, and Section 101, supra.

Yours very truly,

SI GARRETT

Attorney General

June 30, 1953

Hon. James F. Hester

Judge of Probate

Franklin County

Russellville, Alabama

Counties — Gasoline and Gasoline Tax — Franklin County —
Highways and Highway Department.

1. The outstanding road and bridge bonds of Franklin County in the amount of \$122,000 are not debts of the State Highway Department under Act No. 143, General and Local Acts 1951, Page 378, but are debts of Franklin County and must be considered in determining the county's constitutional debt limit.
2. The State Highway Department may use an amount not exceeding one-third of the gasoline tax formerly received by Franklin County, and now received by it, in the retirement of the road and bridge bonds of Franklin County issued by said county prior to the adoption of the Code of Alabama 1940.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion, bearing date of June 6, 1953, is as follows:

"The Courthouse of Franklin County, Alabama was destroyed by fire on January 12, 1953, resulting in a necessity that the Board of Revenue of said county construct, as soon as possible, a new courthouse for said county, the site of the destroyed building will be used. The income from the 2½ ad valorem tax assessment, authorized by Section 215 of the Constitution, is the only available revenue that can be depended upon. And also the County Agricultural Agent's Department is badly in need of office space and the Board of Revenue of said county has, under consideration, the plan of also constructing an office building for that department if both buildings can be financed with the income from said tax.

"Franklin County has, at the present, outstanding road and bridge general obligation bonds in the principal sum of \$122,000.00, issued August 1st, 1940, being amortized at the rate of \$10,000.00 per year, said bonds are being paid with the use of \$9,960.00 of gasoline excise tax funds authorized by Local Act of the Legislature, known as the Waldrep Act, Local Acts of 1936, Page 15 with the county supplementing from said 2½ mill tax revenue the additional funds necessary to pay the balance of principal and interest each year, which additional amount, for the next payment, is \$4,920.00, reducing each year by the reduction of interest on the amortized payments.

"Under the authority of two local acts of the 1951 Legislature, known as the Todd Act, page 378, and the Oden Act, page 1288, and case of Hall Vs. Underwood, 63 South 2d page 683 (advance sheets) the State Highway Department of Alabama has jurisdiction of the repair, maintenance and construction of all public roads and bridges of Franklin County, Alabama and under Section 6 of the Todd Act, 'after the effective date of this act, the State Highway Department shall pay all of the outstanding financial obligations of Franklin County, Alabama which were incurred prior to the adoption of this act, for the construction, maintenance or repair of county roads and bridges out of the funds to be paid over to the highway department under the provisions of Section 4 of this act. Nothing contained in this act, however, shall be construed to relieve Franklin County of the liability for paying any of its financial obligation now existing or hereinafter incurred under the provisions of Section 2(b) in the event the funds paid over to the State Highway Department are insufficient to do so or to require any of the financial obligations presently existing or hereinafter incurred under the provisions of Section 2 (b) hereof of the county to be paid from the funds of the Highway Department.'

"The Board of Revenue is advised by fiscal agents that the income from said tax to said county will probably support the necessary obligations of the county to be issued for the construction of such buildings if all of said tax revenue can be made available for repayment of such obligations to be issued.

"The consent of the State Highway Department to pay the full accruals, principal and interest of payments, to become due each year on the

said outstanding road and bridge bond issue of 1940 from the gasoline excise tax to be paid to it by the state, Section 7 of the Todd Act, and relieve the county of its supplement for the purpose, out of the said ad valorem tax, if it can legally do so, has been obtained by the Board of Revenue of said county.

"1. Please advise whether or not the \$122,000.00 outstanding bonds of the 1940 issue is an obligation of the State Highway Department? The Board of Revenue of said county is advised that said bonds are the obligation of the State Highway Department and, therefore, under the consistent ruling of the Supreme Court, the interest on the same follows the principal obligation and becomes a part of the total obligation and should be paid by the State Highway Department in toto.

"2. Please advise whether or not the State Highway Department may lawfully pay from funds accruing to it on the account of Franklin County, Alabama, other than the said funds to be derived from the constitutional ad valorem tax of one-fourth of one percentum that can be used for construction of public buildings, that is to say, from the gasoline tax funds, and relieve the county of said supplemental funds?

"3. Also please advise whether or not the county may be relieved of the \$122,000.00 of road and bridge bonds as against its constitutional debt limitation so that the county could issue new bonds to the full amount of 3½ per centum of its property assessments for taxation to obtain funds with which to construct said public buildings?"

In response to my letter of June 9, 1953, relative to the above request, you advise me under date June 11, 1953, as follows:

"The \$227,000.00 of bonds mentioned in the Waldrep Act, of which \$122,000.00 is still outstanding, was a consolidation of several issues authorized by vote of the people of the county, all of which were issued for Road and Bridge purposes. The \$227,000.00 issues were refunded in 1940, after those issues were reduced to \$189,000.00. I quote the pertinent paragraph of the refunding bond, 1940, as follows: 'This bond is a general obligation of the county for the payment of principal and interest of which the full faith, credit and taxing power of the county are irrevocably pledged. As additional security for the payment of the principal and interest of the series of bonds of which this is one, the county has pledged the 2½ mill special tax authorized by Section 215 of the constitution and also a sufficient amount of the state gasoline excise tax distributed to the county.' There are no specific pledges prior to the 1940 series of bonds of the gasoline money or of the money from the levy under Section 215 of the Constitution."

The legislature in 1936 amended Act No. 99, Local Acts 1935, page 37, creating a sinking fund for the retirement of the \$227,000 outstanding road bonds of Franklin County. It provided for the sum of \$830.00 each month

to be set aside from the excise tax on gasoline or other liquid motor fuels for the retirement of said bonds. Act No. 19, General and Local Acts 1936, page 15.

In 1940, and prior to the adoption of the Code of Alabama 1940, the said bonds were refunded and in addition to pledging the full faith and credit and taxing power of the county, there was pledged the 2½ mill special tax authorized by Section 215 of the Constitution of 1901 and "also a sufficient amount of the state gasoline excise tax distributed to the county."

Title 51, Section 647, Code of Alabama 1940, as amended by Act No. 649, General and Local Acts 1949, page 998, provides that the governing body of each county may expend an amount not to exceed one-third of the total amount of such revenue that may be received by such county from the gasoline tax in the payment of any debt, incurred by such county for the construction of roads or bridges.

In *Cochran v. Marshall County et al.*, 242 Ala. 314, 6 So. 2d 489, our Supreme Court said:

"These provisions say to the county, you cannot use the gasoline tax fund other than for the construction, improvement and maintenance and supervision of highways and bridges and streets, including the retirement of bonds for the payment of which such revenues have been pledged. However, you are authorized to use one-third of such fund in the payment of any debt that may have been (that is, therefore, before the adoption of the Code of 1940) incurred for such purpose."

In my opinion, Act No. 19, *supra*, made it mandatory on the part of Franklin County to set up an annual sinking fund of \$9,960.00 for the retirement of said bonds, but it still was permissible for the county to use more for that purpose, if so desired, not exceeding one-third of its share of the tax on gasoline or other liquid motor fuels.

This would have been the situation, however, before the passage of Act No. 143, General and Local Acts 1951, page 378, and Act No. 735, General and Local Acts 1951, page 1288. These two acts, however, placed the responsibility for the construction, maintenance and repair of the county roads and bridges in Franklin County upon the State Highway Department. The appropriate state official is authorized by said Act No. 143, *supra*, to pay over to the State Highway Department any funds or amounts to which Franklin County is entitled from the proceeds of the State gasoline tax, the motor vehicle license tax allocated to the county, or any other state tax. Under Act No. 735, the county governing body is divested of its supervision over any road and bridge funds. By Act No. 143, *supra*, the duty of paying all outstanding obligations of Franklin County incurred prior to the adoption of the act for the construction, maintenance or repair of county roads and bridges is placed upon the State Highway Department. These payments are made out of funds to be turned over to the State Highway Department under the provisions of said act.

It is to be noted that Act No. 143, supra, further provides:

"Nothing contained in this act, however, shall be construed to relieve Franklin County of the liability for paying any of its financial obligations now existing or hereafter incurred under the provisions of Sections 2(b) hereof in the event the funds paid over to the State Highway Department are insufficient to do so, or to require any of the financial obligations presently existing or hereafter incurred under the provisions of Section 2(b) hereof of the county to be paid from funds of the Highway Department."

What then is the county's situation since the passage of Acts No. 143 and 735, supra.

First, the remaining outstanding road and bridge bonds in the principal amount of \$122,000 are not debts or obligations of the State Highway Department. The said bonds are general obligation bonds of Franklin County. In view of constitutional restrictions, I know of no way in which the legislature could transfer the debt of the county to the State Highway Department in such a way as to eliminate the debt as one to be considered in determining the county's constitutional debt limit. The bond holders have vested rights of which they cannot be deprived without their consent. Here Act No. 143, supra, expressly says that Franklin County is not relieved of the liability for paying any of its financial obligations now existing. This obligation to pay is, in my opinion, a debt of Franklin County which must be considered in determining the county's constitutional debt limit. Norton v. Lusk, 248 Ala. 110, 26 So. 2d 849.

Second, Act No. 19, supra, is, in my opinion, no longer operative since the State gasoline tax money theretofore going to Franklin County, and from which the county treasurer or other custodian could provide therefrom the said sinking fund as provided in Act No. 19, supra, does not now ever reach the county, but goes directly from the proper State official to the State Highway Department. In addition, under Act No. 735, supra, the county governing body has no control over any road and bridge funds.

It is my opinion, however, that since the legislature has placed the duty on the State Highway Department to pay the said bond obligations, the Department can do so from any funds coming to it which are legally available for that purpose. One such fund is the gasoline tax fund, not exceeding one-third of the proceeds thereof. *Bullock County v. Sherlock*, 242 Ala. 262, 5 So. 2d 800; Quarterly Report of Attorney General, Vol. 16, page 262.

I believe it sound to say that since Franklin County could have, before the passage of Acts Nos. 143 and 735, supra, used not exceeding one-third of the proceeds of the gasoline tax to pay the principal and interest on the said bond debt, since it was incurred before the adoption of the Code of Alabama 1940, the State Highway Department may likewise do so since the passage of said acts.

It follows, therefore, that questions one and three are answered in the negative and question two in the affirmative.

Yours very truly,

SI GARRETT

Attorney General

June 30, 1953

Hon. L. B. Sullivan, Director,
Department of Public Safety,
State of Alabama,
Montgomery 2, Alabama.

Funds — Public Safety Department.

All necessary expenses incurred in the furtherance of the provisions of Act No. 822, General and Local Acts 1951, page 1454, may properly be paid by the Director of Public Safety from the special fund established by the provisions of said Act No. 822.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of May 7, 1953, is as follows:

“The 1951 Session of the Alabama Legislature enacted certain legislation relative to the removal of livestock from State and Federal Aid Highways in Alabama, such being in the interest of highway safety, with this Department being charged with the responsibility of enforcement.

“Of the above, Act No. 822, Section 4 provides that all fees collected under the provisions of this Act shall be paid to the State's Treasurer and be credited to the account of a special fund to be expended in furtherance of the purposes of this Act.

“In compliance with Act No. 822, this Department has designated one highway patrolman with special equipment to devote full time to the enforcement of this Act's provisions. Also, by arrangement with the De-

partment of Corrections and Institutions, one convict trusty has been assigned to this detail.

Necessary expenditures such as salaries, per diem, purchase of equipment and maintenance of vehicles have been assumed by this Department out of its regular appropriations.

"This writer respectfully requests that he be advised by your office as to what portion of the above expenditures may be paid out of fees derived from the enforcement of this Act and deposited with the State's Treasurer if such deposits should be of substantial amounts."

The pertinent parts of Act No. 822, General and Local Acts 1951, page 1454, are as follows:

"Section 1. The Director of Public Safety shall provide for taking up and impounding livestock or animals running at large upon State and Federal Aid Highways which have been officially designated as such regularly and customarily patrolled by the State Highway Patrol, or upon the right of ways of such highways,

"Section 4. All fees collected under the provisions of this Act shall be paid to the State's Treasurer and be credited to the account of a special fund to be expended in furtherance of the purposes of this Act."

By the provisions of Section 1, *supra*, the Director of Public Safety is given the duty of taking up and impounding certain livestock and animals; and, as stated in your inquiry, certain equipment and personnel have been designated or assigned to this duty in compliance with this provision.

Section 4 is the only provision in Act No. 822, *supra*, providing for the disposition of the funds collected thereunder. It is to be noted that the only requirement for expending said funds is that they be expended in furtherance of the purposes Act No. 822, *supra*.

The equipment and salaries set out in your inquiry are apparently all necessary in the furtherance of the provisions of Act No. 822, *supra*.

It is, therefore, my opinion that all, or any part, of any expenses necessary in the furtherance of the provisions of Act No. 822, *supra*, whether for salaries, per diem, purchase and maintenance of equipment, or otherwise, may properly be paid by the Director of Public Safety from the special fund established by Section 4 from fees collected under the provisions of said Act No. 822.

Yours very truly,

SI GARRETT

Attorney General

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